

®,
SLP(C)No. 2016 OF 2004
ITEM No.11

Court No. 8

SECTION XIIA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.2016/2004
(From the judgment and order dated 22/10/2003 in CRP 4927/99
of The HIGH COURT OF A.P AT HYDERABAD)

KANDULA PRABHAKAR & ANR.

Petitioner (s)

VERSUS

KANUDALA SUDHAKAR
(With prayer for interim relief and office report)

Respondent (s)

Date : 06/08/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL
HON'BLE MR. JUSTICE H.K. SEMA

For Petitioner (s)Mr. P.S. Narasimha, Adv.
forM/s P.S.N. & Co.

For Respondent (s)Mr. Bhupender Yadav, Adv.
Mr. Rahul Choudhary, Adv.
Ms. Ruchi Kohli, Adv.
Mr. Umesh Kohli, Adv.

Mr. R.C. Kohli,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed, impugned orders rendered by High Court as well as trial Court and ex-parte decree are set aside and the suit is restored to its original file giving one more opportunity to the appellants to further cross-examine P.W. 1. It would be open to the plaintiff to adduce further evidence, both oral and documentary. Thereafter, Defendant Nos. 5 and 6 would be entitled to adduce evidence either in support of their defence or counter claim. In relation to counter claim, if evidence is adduced on behalf of defendant Nos. 5 and 6, it would be open to the plaintiff to adduce evidence in rebuttal. No costs.

[Charanjeet Kaur]
Court Master

[Om Prakash]
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5065 OF 2004
(arising out of SLP(C) No. 2016/2004)

Kandula Prabhakar & Anr.

..
Appellant(s)

Versus

Kanudala Sudhakar

..

Respondent(s)

O R D E R

Heard learned counsel for the parties.
Leave granted.

This appeal has been filed against order rendered by the High Court of Andhra Pradesh whereby order dismissing the petition filed under Order 9 Rule 13 of the Code of Civil Procedure (here inafter referred to as 'the Code') has been upheld.

Short facts are that the appellants who were defendant Nos. 5 and 6, entered appearance in suit for partition and filed written statement. In the said suit, P.W. 1 was examined and on 26.2.1996 he was cross-examined in part and thereafter the suit was fixed for 29.2.1996 for his further cross-examination on which date it was adjourned to 11.3.1996, reasons whereof are not known as nothing has been mentioned in the order sheet. On 11.3.1996 learned counsel for defendant Nos. 5 and 6 stated that he had no instruction to appear in the case on which submission, trial Court in effect and substance discharged P.W. 1, closed evidence of plaintiff, heard argument on his behalf and directed the case to be posted for judgment

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on the next day, i.e. 12.3.1996 on which day suit was decreed. Thereupon, petition under Order 9, Rule 13 of the Code was filed which was dismissed by the trial Court and the dismissal has been upheld by the High Court. Hence this appeal by special leave.

Having heard the parties, we are of the view that the procedure adopted by trial Court is a novel one and wholly unknown to law. If on the date fixed for further cross-examination of P.W. 1, defendants failed to appear, the Court could have at the highest discharged the witness and in case the plaintiff did not intend to examine any further witness, his case could have been closed and in all fairness, a date should have been fixed for examination of witnesses by Defendants Nos. 5 and 6. But instead of adopting the said procedure, the trial Court after closing case of the plaintiff in hot haste, heard argument on his behalf and posted the case for judgment on the very next day when suit was decreed. In the facts and circumstances, we are of the view that trial Court was not at all justified in decreeing the suit and accordingly, the petition under Order 9 rule 13 of the code ought to have been allowed instead of the same having been dismissed which order should have been reversed by the High Court.

For the foregoing reasons, appeal is allowed, impugned orders rendered by High Court as well as trial Court and ex-parte decree are set aside and the suit is restored to its original file giving one more opportunity to the appellants to further cross-examine P.W. 1. It would be open to the

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plaintiff to adduce further evidence, both oral and documentary. Thereafter, Defendant Nos. 5 and 6 would be entitled to adduce evidence either in support of their defence or counter claim. In relation to counter claim, if evidence is adduced on behalf of defendant Nos. 5 and 6, it would be open to the plaintiff to adduce evidence in rebuttal. No costs.

.....J[B.N. AGRAWAL]

.....J [H.K. SEMA]

NEW DELHI,
AUGUST 6, 2004.

