

A K.S. KRISHNA SARMA
v.
KIFAYAT ALI
(C.A. No. 187 of 2008)

B JANUARY 9, 2008
(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Code of Civil Procedure, 1908:

C *Impleadment of legal representative in a proceeding for declaration of title and possession – Suit decreed by trial Court in favour of plaintiff without impleading daughter of deceased defendant No.2 – Matter remanded by Single Judge of High Court to trial Court holding the decree defective, as passed, in absence of one of the legal representatives of defendant*
D *No.2 – Re-hearing by trial Court – Defendant No.1 adducing additional evidence by introducing several documents – Held: Not allowed in view of clarificatory order passed by Single Judge of the High Court directing that there was no need to record entire evidence afresh and defendant No.1 to confine*
E *himself to the defence taken in the written statement by the newly impleaded defendant – Moreover, only daughter of defendant No.2 was permitted to be impleaded and to file written statement – Constitution of India, 1950 – Article 227.*

F **Respondent-plaintiff filed a suit for declaration of title and possession. During pendency of the suit, defendant No.2 died and all his legal representatives were brought on record except one daughter. Trial Court decreed the suit in favour of the plaintiff. In the appeal filed by the defendant, Single Judge of the High Court held that in**
G **the absence of daughter of defendant No.2, one of the legal representatives, the decree was defective, and remanded the matter to the trial Court with a direction to take her on record. The order was challenged by the respondent by filing a Letters Patent Appeal before the**

Division Bench of the High Court. The Division Bench of the High Court remitted the matter to the Single Judge with a direction to re-hear the matter insofar as daughter of defendant No.2 was concerned and consider the validity of the decree passed in her absence amongst other matters on merits. The Single Judge set aside the judgment and decree and remanded the matter to trial Court for de novo enquiry with a direction to take daughter of defendant No.2 on record and to consider her written statement. It was also clarified by the High Court that there is no need to record the entire evidence afresh. Accordingly, daughter of defendant No.2 was added as a party and she had filed her written statement. PW-1 was recalled and re-examined. Defendant No.1 (DW-1) sought to file an additional affidavit in lieu of chief-examination introducing many documents. The trial Judge returned the additional affidavit with a direction to file a fresh affidavit confining to the right of newly impleaded legal representative only. The said order of the trial Judge was challenged by 1st defendant by filing a Civil Review Petition before the High Court under Article 227 of the Constitution of India. The petition was dismissed in limine by the Single Judge of the High Court. Questioning the said order, 1st defendant has filed the present appeal.

Disposing of the appeal, the Court

HELD: 1.1 It is clear from the clarificatory order passed by the Single Judge of the High Court that there is no need to record the evidence afresh in respect of all issues and the direction was to permit the daughter of defendant No.2 in the original suit to come on record, file her written statement and decide the matter based on her claim as well as other materials which were on record. As a matter of fact, after remand and after impleadment of daughter of defendant No.2, PW-1 confined himself to the case as against her. In view of the same, as rightly observed by the Single Judge of the High Court, the

A appellant cannot be permitted to lead evidence afresh on other issues. The trial Judge as well the Single Judge of the High Court correctly understood the earlier orders including the clarificatory order and rightly issued direction to 1st defendant to confine himself to the defence taken in the written statement by the daughter of defendant No.2. (Para – 6) [431-C, D, E, F]

1.2 It is clarified that the parties are at liberty to lead fresh evidence only in respect of defence/stand taken by the newly impleaded defendant in her written statement. (Para – 6) [431-F]

C CIVILAPPELLATE JURISDICTION : Civil Appeal No. 187 of 2008.

D From the final Order dated 13.9.2005 of the High Court of Judicature. Andhra Pradesh at Hyderabad in C.R.P. No. 3360/2005.

Sridhar Potaraju, D. Julius Riamei and John Mathew for the Appellant.

E Anil Kumar Tandale for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1) Leave granted.

F 2) This appeal is directed against the order dated 13.09.2005 passed by the learned single Judge of the High Court of Andhra Pradesh in C.R.P. No. 3360 of 2005 in and by which the learned Judge upheld the order dated 24.02.2005 of the Xth Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad in O.S. No. 296 of 1982.

G 3) Brief facts in nutshell are:

H The first defendant in O.S. No. 296 of 1982 on the file of the Xth Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad is the appellant in the present appeal. The respondent herein was the plaintiff in that suit. In respect of the

→ agricultural land measuring Acs. 32.00 covering Survey Nos. 141, 142 and 143 and buildings belonging to one late Salarjung, the plaintiff filed the said suit for declaration of title and for consequential possession. The Suit was filed originally against K.S. Krishna Sarma, the appellant herein, and one Seshachalapathi as defendants. During the pendency of the suit, Seshachalapathi died and his legal representatives were sought to be brought on record in I.A. No. 189 of 1983. Among the legal representatives, one Smt. A. Annapurna, daughter of late Seshachalapathi, was not brought on record since the application to bring her on record came to be dismissed due to non-payment of process fee. Other legal representatives were brought on record. The suit was resisted by filing written statements by 1st and 4th defendants. Finally, the suit was decreed in favour of the plaintiff. The appeal was filed before the High Court at the instance of defendant Nos. 1, 2 & 4. Learned single Judge of the High Court, after finding that in the absence of Smt. A. Annapurna, one of the legal representatives, the decree was defective, allowed the appeal and remanded the matter to the trial Court with a direction to permit Smt. A. Annapurna to come on record. The said order of the learned single Judge was challenged by the plaintiff by filing L.P.A. No. 27 of 1997 before the Division Bench of the High Court. The Division Bench set aside the order of the learned single Judge and remitted the matter to the learned single Judge with a direction to re-hear the matter insofar as respondent No.8 is concerned who was transposed as appellant No.3 and consider the validity of the decree passed during the absence of respondent No.8 amongst other matters on merits. Thereafter, the matter was heard by learned single Judge and by order dated 07.03.2000, the learned single Judge set aside the judgment and decree of the trial Court and remanded the matter for *de novo* enquiry with a direction to permit Smt. A. Annapurna to come on record and to consider her written statement. In an application for clarification, i.e. C.M.P. No. 22134 of 2000, it was clarified that there is no need to record the entire evidence afresh, but Smt. A. Annapurna should be permitted to come on

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A record and file her written statement and decide the matter insofar as her interest is concerned. After the said clarification, Smt. A. Annapurna was added as a party and she also filed her written statement. PW-1 was recalled and re-examined. DW-1 sought to file an additional affidavit in lieu of chief-examination introducing many documents. The learned trial Judge directed the defendants to restrict themselves relating to the right of Smt. A. Annapurna over the suit scheduled property for the purpose of leading evidence and saying so returned the additional affidavit filed by DW-1 with a direction to file a fresh affidavit confining to the right of the 8th defendant as per the direction of the High Court. The said order dated 24.02.2005 of the Xth Additional Chief Judge was challenged by way of C.R.P. No. 3360 of 2005 before the High Court under Art. 227 of the Constitution of India. The learned single Judge, in the light of the earlier orders, particularly, order dated 5.7.2001 clarifying earlier order dated 07.03.2000, dismissed the revision *in limine* and upheld the order of the trial Judge. Questioning the said order, the 1st defendant has filed the present appeal after getting leave from this Court.

E 4) Heard learned counsel for both the parties.

F 5) The only point for consideration in this appeal is whether the appellant-1st defendant is entitled to lead evidence in respect of all issues including additional issues afresh or to be confined only in respect of 8th defendant who was subsequently impleaded on the orders of the High Court?

G 6) Though learned counsel for the appellant strenuously contended that after remand and after framing additional issues, the appellant is entitled to lead fresh evidence, in view of clarificatory order dated 5.7.2001 in Civil Misc. Petition No. 22134 of 2000 in C.C.C.A. No. 94 of 1987, it is open to the parties to lead evidence only in respect of the defence taken in the written statement of newly impleaded defendant. After allowing Smt. A. Annapurna to come on record and to file her written statement, it is but proper for the parties to lead evidence

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only in respect of the stand taken in the written statement filed by her. It is worthwhile to refer the clarificatory order dated 5.7.2001 of the learned single Judge which reads as under:

"It is brought to my notice by Sri B. Ramamohan Reddy, learned counsel that the Trial Court is under the impression that the entire evidence has to be recorded afresh. It is clarified that the trial Court need not record the entire evidence afresh but permit the said Annapurna to come on record and file her written statement and decide the matter in so far as her interests are concerned.

The petition is accordingly disposed of."

It is clear that there is no need to record the evidence afresh in respect of all issues and the direction was to permit Smt. A. Annapurna to come on record, file her written statement and decide the matter based on her claim as well as other materials which were on record. As a matter of fact, after remand and after impleadment of 8th defendant, PW-1 confined himself to the case as against the 8th defendant. In view of the same, as rightly observed by the learned single Judge of the High Court, the 1st defendant cannot be permitted to lead evidence afresh on other issues. We are satisfied that the learned trial Judge as well the learned single Judge of the High Court correctly understood the earlier orders including the clarificatory order dated 5.7.2001 and rightly issued direction to the 1st defendant to confine himself to the defence taken in the written statement of the 8th defendant. We reiterate and clarify that the parties are at liberty to lead fresh evidence only in respect of defence/stand taken by the newly impleaded 8th defendant (Smt. A. Annapurna) in her written statement.

7) With the above clarification, the appeal is disposed of. No costs.

S.K.S.

Appeal disposed of.