



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3397]

MONDAY, THE THIRTIETH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA
RAO**

SECOND APPEAL NO: 274/2024

Between:

Sri Mukunda Reddy

...APPELLANT

AND

S Chenchu Krishna Reddy and Others

...RESPONDENT(S)

Counsel for the Appellant:

1. CH SIVA REDDY

Counsel for the Respondent(S):

1. VALLURU CHETAN SUSHEEL

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.274 of 2024

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure (for short, 'C.P.C.') is filed aggrieved against the decree and judgment dated 05.02.2024 in A.S.No.126 of 2023 on the file of the Court of learned XII Additional District Judge, Srikalahasthi (for short, 'the first appellate Court'), in reversing the decree and judgment dated 31.03.2018 in O.S.No.112 of 2010 on the file of the Court of learned Senior Civil Judge, Srikalahasthi (for short, 'the trial Court').

2. The appellant herein is the defendant No.5 and the respondent No.1 herein is the plaintiff and the respondent Nos.2 to 5 are the defendant Nos.1 to 4 before the trial Court.

3. The plaintiff initiated action in O.S.No.112 of 2010 on the file of the trial Court with a prayer for recovery of an amount of Rs.5,00,000/- with interests towards compensation for acquisition of suit schedule land and for costs.

4. The trial Court dismissed the suit without costs. Felt aggrieved of the same, the unsuccessful plaintiff in the above said suit filed A.S.No.126 of 2023 on the file of the first appellate Court. By decree and judgment dated 05.02.2024 in A.S.No.126 of 2023, the first appellate Court allowed the appeal suit by setting aside the decree and judgment passed by the trial Court.

5. For the sake of convenience, both parties in the second appeal will be referred to as they were arrayed in the original suit.

6. Case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.112 of 2010, is as follows:

The plaintiff is the absolute owner of the plaint schedule land and all his lands were acquired by the Government for special economic zone from the year 2007 onwards. The plaintiff pleaded that he was paid with compensation to some of the lands that were acquired and he did not receive any payment for the lands mentioned in the schedule and that he immediately protested for the same, but his protest was not considered. The plaintiff further pleaded that during the pendency of the suit, the plaint was amended with an amended plea that some of the lands left without adding in the plaint schedule and in spite of which the plaintiff mentioned the said lands in the schedule of pre-litigation matter, but due to the oversight and typographical mistake, the same is not mentioned, as such the suit is amended seeking recovery of compensation by showing those lands in the schedule No.IV acquired by the defendants. The plaintiff further pleaded that he filed the present suit for recovery of Rs.5,00,000/- per acre from the defendants jointly and severally at the rate of Rs.3,00,000/- per acre for an extent of Ac.1.98 cents. Hence, the present suit.

7. The defendant Nos.1 to 4 remained ex-parte before the trial Court. The defendant No.5 filed written statement before the trial Court. The brief averments in the written statement filed by the defendant No.5 are as follows:

The defendants purchased an extent of wt land measuring Ac.0.19 cents in S.No.211/1, Ac.0.12 cents in S.No.211/2, Ac.0.17 cents in S.No.211/3, totaling Ac.0.48 cents situated at Cherugupalem Village, Sathyavedu Mandal, Chittoor District from the plaintiff under the sale deed bearing No.1832, dated 25.10.2008, and an amount of Rs.1,44,000/- was paid to the plaintiff at the rate of Rs.2,50,000/- for dry land and Rs.3,00,000/- for wet lands. The defendant No.5 pleaded that the above said amount was paid to him through two cheques bearing No.004285, dated 10.03.2006 for an amount of Rs.4,000/- and another cheque bearing No.004289, dated 12.03.2008, for an amount of Rs.1,40,000/- . The defendant No.5 further pleaded that after complying with the statutory obligations, he was put in possession of the above lands for establishment of SEZ and except the above Ac.0.48 cents of land in the above three survey numbers belonged to the plaintiff, the defendant No.5 has not purchased any other land from the land in the schedule. The defendant No.5 further pleaded that he was put in possession of the land on 18.07.2007, after complying statutory obligations with APIIC as such the defendants are not liable to pay compensation to the individual land owners, whose lands were acquired by the Government after following the due process of law by paying compensation for the lands acquired, as such, he requested for the dismissal of the suit.

8. On the basis of above pleadings, the trial Court framed the following issues for trial:

1. Whether the 5th defendant has purchased lands from the plaintiff except S.No.211/1, 211/2 and 211/3 to an extent of Ac.0.48 cents?

2. Whether the 5th defendant acquired the said lands after following due process of law by paying compensation?
 3. Whether the 5th defendant acquired more than Ac.0.05 cents of land in S.No.360/2 situated at Chirugapalem in Sathyavedu Mandal?
 4. Whether the suit claim made by the plaintiff is barred by limitation by afflux of time?
 5. Whether there is no cause of action to file the present suit?
 6. Whether the plaintiff is entitled to recover the suit amount from the defendants as prayed for?
 7. To what relief, if any?
9. During the course of trial in the trial Court, on behalf of the plaintiff, P.W.1 was examined and Ex.A-1 was marked. On behalf of the defendants, D.W.1 was examined and no documents were marked.
10. The trial Court, after conclusion of trial, on hearing arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit without costs. Felt aggrieved thereby, the unsuccessful plaintiff filed the appeal suit in A.S.No.126 of 2023 on the file of the first appellate Court.
11. The first appellate Court, after hearing arguments, allowed the appeal suit filed by the appellant-plaintiff. Felt aggrieved of the same, the defendant No.5 in O.S.No.112 of 2010 filed the present second appeal before this Court.

12. On hearing both sides, at the time of admission of the second appeal on 30.01.2026, this Court framed the following substantial questions of law:

1. Whether the Plaintiff Schedules can be amended when the First Appeal was pending, so as to bring on record new/additional properties i.e. Ac.2.24 cents in Sy.No.211/1,2 in Schedule-I; Ac.0.04 cents in Sy.No.223/21; Ac.0.02 cents in Sy.No.223/3A in Schedule-II; and as separate Schedule i.e. V Schedule to be added to the Plaintiff, on the alleged ground of better adjudication?
2. Whether new/additional properties can be added to the Schedules of the plaintiff as aforesaid and addition of a separate Schedule i.e. V Schedule to the Plaintiff, when the Appeal was pending, in the absence of any pleadings to that effect in the Plaintiff?
3. Whether the Respondent No.1/Appellant/Plaintiff is entitled to any relief of amendment of the plaintiff by adding new properties to the Schedules of Plaintiff as aforesaid and addition of a separate Schedule i.e. V Schedule to the Plaintiff, without mentioning the market value of the said properties to be added to the amended schedules and addition of a separate Schedule i.e. V Schedule to the Plaintiff, without payment of Court fee on the value of such additional properties?
4. Whether the First Appellate Court is justified in allowing amendment of the Plaintiff Schedules as aforesaid and addition of a separate Schedule i.e. V Schedule to the Plaintiff, without a finding that the said Court is satisfied that in spite of due diligence, the Respondent herein could not introduce

amendment before commencement of trial, in terms of the Proviso to Rule 17 to Order VI C.P.C?

On hearing learned counsel for the appellant, this Court on 30.01.2026, framed the following additional substantial question of law:

1. Whether the first appellate court has set aside the judgment and decree passed by the trial Court without hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved?

13. Heard Sri Ch.Siva Reddy, learned counsel appearing for the appellant-defendant No.5, and Sri Valluru Chetan Susheel, learned counsel appearing for respondents.

14. Law is well settled that under Section 100 of C.P.C., the High Court cannot interfere with the findings of fact arrived at by the first appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

15. Learned counsel for the respondent No.1/ plaintiff would contend that the present second appeal, which is filed against an order/judgment of remand passed by the First Appellate Court, therefore, a Civil Miscellaneous Appeal under Order XLIII Rule 1 read with Section 104 of the Code of Civil Procedure, 1908, is maintainable and the present second appeal is not at all maintainable

against the judgment of the First Appellate Court and as such, the second appeal is liable to be dismissed on the said ground alone.

16. The First Appeal has been filed by defendant No.5 against the decree and judgment passed in O.S.No.112 of 2010, on the file of the Senior Civil Judge, Srikalahasthi. Based upon the pleadings of both the parties, the trial Court framed as many as seven (07) issues and answered the issues and dismissed the suit in O.S.No.112 of 2010 on merits. Aggrieved against the said judgment and decree, the plaintiff in the said suit filed a regular first appeal before the District Court, at Chittoor, and the same was made over to the XII Additional District Judge, Srikalahasthi, in accordance with law. The First Appellate Court extracted the grounds of appeal in paragraph No.3 of the judgment. The contents in the paragraph No.4 of the judgment of the First Appellate Court is extracted as follows:

“4. To prove the above appeal grounds, plaintiff adduced oral and documentary evidence before this court, meanwhile he filed I.A.No.573 of 2023 under Order VI, Rule 17 of C.P.C read with Rule 28 of C.R.P. praying for amendment of plaint as per particulars mentioned in the petition schedule. Like-wise he also filed I.A.No.267 of 2023 under Order XLI, Rule 27 r/w Section 151 of the Code of Civil Procedure with a prayer to permit the petitioner to file the documents and also permit the petitioner to adduce additional evidence. On perusal of both petitions averments along with documents enclosed, those are original documents i.e., pattadar pass book, title deed, old ryothwari passbooks and also cist payment receipts and there are some sale letters, sale agreements. In view of the prayers submitted by the counsel for appellant, all the original documents which are filed along with the petition shall be marked on behalf of the petitioner and also it is very essential to decide the matter pinpointedly between the parties to adduce additional evidence. Accordingly these points are answered in favour of plaintiff”.

17. By narrating the aforesaid reasons, the First Appellate Court allowed the first appeal and the total judgment of the trial Court is set aside and the matter is remitted back to the trial Court. The First Appellate Judge/XII Additional District Judge, Srikalahasthi, without framing the points for determination as required under Order XLI Rule 31 of the Code of Civil Procedure, 1908, and without answering each issue framed by the trial Court, disposed of the regular first appeal in a cryptic manner.

18. *How a regular first appeal has to be disposed of by the first appellate Court has been considered by the Apex Court in various decisions. Order XLI of C.P.C. deals with appeals from original decrees. Among the various Rules, Rule 31 mandates that the judgment of the first appellate Court shall state:*

a) the points for determination;

b) the decision thereon;

c) reasons for the decision; and

d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

19. It is settled position of law that an first appeal is a continuation of the proceedings of the original Court. Ordinarily, the appellate jurisdiction involves re-hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial Court is open for reconsideration. Therefore, the First Appellate Court is required to address itself to all the issues and decide the case by giving reasons. The Court of first appeal must record its

findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the First Appellate Court must display conscious application of mind and record findings supported by reasons on all issues and contentions.

20. In ***H.Siddiqui (Dead) by L.Rs. Vs A.Ramalingam***¹, the Apex Court held as follows:

"The provision under XLI, Rule 31 of C.P.C. provides guidelines for the appellate Court as to how the Court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate Court that the Court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the appellate Court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate Court are well founded and quite convincing. It is mandatory for the appellate Court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final Court of fact, the first appellate Court must not record mere general expression of concurrence with the trial Court judgment rather it must given reasons for its decision on each point independently to that of the trial Court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the Court must proceed in adherence to the requirements of the said statutory provisions."

21. The judgment of the First Appellate Court in A.S.No.126 of 2023, on the file of the XII Additional District Judge, Srikalahasthi, reveals that the appellant filed I.A.No.573 of 2023, under Order VI Rule 17 of the Code of Civil Procedure, 1908, for amendment of the plaint in the original suit before the First Appellate

¹ MANU/SC/0174/2011

Court, and the First Appellate Court simply allowed the said application at the appellate stage without giving any reasons. As could be seen from the judgment of the First Appellate Court in A.S.No.126 of 2023, a petition under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908, *vide* I.A.No.267 of 2023 was filed before the First Appellate Court to permit the appellant to produce the additional evidence. The First Appellate Court has not even decided the said application on merits and without giving any reasons, the First Appellate Court simply allowed the application filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908.

22. The general principle is that the Appellate Court should not travel outside the record of the trial Court and cannot take any evidence in the appeal. However, as an exception under Order XLI Rule 27 of the Code of Civil Procedure, 1908, enables the Appellate Court to take evidence in exceptional circumstances. The *proviso* under Order XLI Rule 27 of the Code of Civil Procedure, 1908, permits the party to produce additional evidence before the Appellate Court, provided that it has to come under the ambit of Order XLI Rule 27 of the Code of Civil Procedure, 1908. The First Appellate Court has not dealt the procedure prescribed under Order XLI Rule 27 of the Code of Civil Procedure, 1908, in allowing the application *vide* I.A.No.267 of 2023, in a proper manner and without giving any reasons the First Appellate Court simply allowed the said petition under Order XLI Rule 27 of the Code of Civil Procedure, 1908, as if the party filed the original documents viz., pattadar pass

book, title deed and land revenue receipts before the First Appellate Court in the said Interlocutory Application.

23. The learned counsel for the appellant placed reliance in **Narayanan Vs Kumaran and Others**², wherein the Apex Court held as follows:

*“In a case of **Kaluvaroya Pillai & Ors. v. Ganesa Pandithan & Ors. (AIR 1969 Madras 148)**, the Apex Court held as follows:-*

“Though this is a case in which the lower appellate Court remanded the suit. It appears to me that the totality of the suit has been remanded to the trial Court for reconsideration in view of certain irregularities inhered therein. As a matter of fact the lower appellate court set aside the judgment and decree of the trial Court in full. Though it gave a liberty to the respondents to have a retrial in the trial Court, presumably, in the interests of justice, it appears to me that the lower appellate Court has substituted its own judgment to that of the trial Court and in the peculiar circumstances of the present case it is not open to the appellants in this civil miscellaneous appeal to canvass the entire judgment and decree of the lower appellate Court by filing an appeal under Order XLIII, Rule 1 (u), C.P.C. I shall presently advert to the right of an appellant in a civil miscellaneous appeal to canvass the correctness of the findings other than those relating to the order of remand in such an appeal. But in so far as this appeal is concerned, as there has been a substitution of the judgment and decree of the appellate Court to that of the trial Court, the only remedy available to the appellants in this case was to file a second appeal, if appeal under Order XLIII, Rule 1 (u), C.P.C. Thus in the peculiar circumstances and on the facts of this case, it is not open to the appellants to canvass the other findings of the lower appellate Court”.”

The ratio laid down in the aforesaid case law is squarely applicable to the present facts of the case. As stated *supra*, against the decree and judgment passed by the trial Court, the first appeal has been filed before the First Appellate Court. The First Appellate Court without following the procedure as required under Order XLI Rule 31 of the Code of Civil Procedure, set-aside the total judgment of the trial Court and simply the matter is remitted back to the trial Court which is unknown to law.

² (2004) 4 Supreme Court Cases 26

24. The learned counsel for the appellant placed reliance in **Jegannathan and Other Vs Raju Sigamani**³, wherein the High Court of Madras, at Madurai Bench, followed the ratio laid down in the case of **Narayanan Vs Kumaran and Others**, as stated *supra*. In the case on hand, the First Appellate Court by remanding the matter, the total judgment of the trial Court is set-aside without following the mandatory provisions laid down under Order XLI Rule 31 of the Code of Civil Procedure, 1908.

25. The learned counsel for the appellant placed reliance on the judgment in **Pulipati Naga Venkata Krishna Rao Vs Shafathunissa** vide C.M.A.No.06 of 2018, dated 16.09.2022, passed by the learned single Judge of this Court. The ratio laid down in the said case law is not at all applicable to the present case. In the case at hand, the trial Court has framed as many as seven (07) issues and disposed of the suit on merits, against which a regular first appeal has been filed before the First Appellate Court, and the First Appellate Court disposed of the first appeal in an unsatisfactory manner without following the provisions under Order XLI Rule 31 of the Code of Civil Procedure, 1908. As noticed *supra*, the first appeal is the valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both the questions of fact and law. Sitting of a Court of appeal, it is the duty of the First Appellate Court to deal with all the issues and evidences led by the parties before recording its findings. On going through the impugned judgment passed by the learned XII Additional District Judge, Srikalahasthi/the First Appellate

³ 2008-4-L.W.1008

Judge, I feel that the District Court/the First Appellate Court has failed to discharge the obligation placed on it as a First Appellate Court. In my view, the judgment under the appeal is cryptic and none of the relevant aspects have even been noticed and the first appeal has been decided in an unsatisfactory manner by the learned XII Additional District Judge, Srikalahasthi. The First Appellate Court without following the provisions as stated *supra* under Order XLI Rule 31 of the Code of Civil Procedure, 1908, allowed the appeal in a routine manner without discussing the mandatory provisions and without giving any reasons, allowed the interlocutory applications as stated *supra* on the ground that the appellant has filed the original documents before the First Appellate Court.

26. In the case at hand, the First Appellate Court has not even framed the points for determination as required under Order XLI Rule 31 of the Code of Civil Procedure, 1908. Furthermore, a petition in I.A.No.573 of 2023, under Order VI Rule 17 of the Code of Civil Procedure, 1908, for amendment of the plaint and a petition in I.A.No.267 of 2023, under Order XLI Rule 27 of the Code of Civil Procedure, 1908, were filed before the First Appellate Court at the First Appellate stage and the First Appellate Court has not even decided the said applications on merits and without giving any reasons the First Appellate Court simply allowed the said applications and remanded the matter to the trial Court for fresh disposal. In my view, the first appeal has been decided in an unsatisfactory manner.

27. *It is a well defined legal principle that the rules of procedure are the hand made of justice. Hence, they shall not be narrowly construed. The procedural laws are designed to facilitate justice and interpreting them purely in a technical manner leaves no room for reasonable interpretation.*

28. For the foregoing reasons, the judgment and decree passed by the First Appellate Court is not legally sustainable and it is not in accordance with the provisions of Order XLI Rule 31 of the Code of Civil Procedure. Since the First Appellate Court has not even framed the relevant points for consideration viz., namely:

1. *Whether the defendant No.5 purchased an extent of Ac.0.48 cents of land in Sy.Nos.211/1, 211/2 and 211/3, from the plaintiff?*
2. *Whether the defendant No.5 was put in possession of the land on 18.07.2007, after complying the statutory obligations with Andhra Pradesh Industrial Infrastructure Corporation Ltd., (APIIC)?*
3. *Whether the respondent No.1/plaintiff is entitled to recover the suit amount from the defendants as sought for?*
4. *Whether the respondent No.1/plaintiff therein is entitled to the relief of amendment of the plaint under Order VI Rule 17 of the Civil Rules of Practice, vide I.A.No.573 of 2023, at the First Appellate Stage?*
5. *Whether the respondent No.1/plaintiff is permitted to produce additional evidence under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908, vide I.A.No.267 of 2023?*

29. On the conspectus of the pleadings of law, the decree and judgment passed by the First Appellate Court is unsustainable and is liable to be set aside. Therefore, interest of justice requires that the matter has to be remitted back to the First Appellate Court i.e. the XII Additional District Judge, Srikalahasthi, with a direction to frame the relevant points for determination as stated *supra* and afford an opportunity to both the parties to submit hearing on points to be framed in accordance with law and dispose of the first appeal on merits. For this purpose, this Court has set up the following points for determination in the first appeal to be decided by the First Appellate Court:

1. *Whether the defendant No.5 purchased an extent of Ac.0.48 cents of land in Sy.Nos.211/1, 211/2 and 211/3, from the plaintiff?*
2. *Whether the defendant No.5 was put in possession of the land on 18.07.2007, after complying the statutory obligations with Andhra Pradesh Industrial Infrastructure Corporation Ltd., (APIIC)?*
3. *Whether the respondent No.1/plaintiff is entitled to recover the suit amount from the defendants as sought for?*
4. *Whether the respondent No.1/plaintiff therein is entitled to the relief of amendment of the plaint under Order VI Rule 17 of the Civil Rules of Practice, vide I.A.No.573 of 2023, at the First Appellate Stage?*
5. *Whether the respondent No.1/plaintiff is permitted to produce additional evidence under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908, vide I.A.No.267 of 2023?*

30. Accordingly, the second appeal is allowed and the decree and judgment dated 05.02.2024 in A.S.No.126 of 2023 on the file of the Court of learned XII Additional District Judge, Srikalahasthi, is set aside and the matter is remanded back to the first appellate Court with a direction to afford an opportunity to both the parties to submit hearing on the points set up *supra* by this Court and to dispose of the first appeal on merits without being influenced by any of the findings recorded in its earlier judgment dated 05.02.2024. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment. The learned Senior Civil Judge, Srikalahasthi, is hereby directed to transmit the trial Court record forthwith to the XII Additional District Judge, Srikalahasthi. Pending miscellaneous applications, if any, shall stand disposed of in consequence. There shall be no order as to costs.

V. GOPALA KRISHNA RAO, J.

Date: 30.03.2026

SRT