

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP No.4032 of 2008

Date:24.02.2015

Between:

R. Prabhakar (died) and others.

...Petitioners.

AND

R. Sailu (died) and others.

...Respondents.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP No.4032 of 2008

ORDER:

This revision is preferred against orders dated 15-04-2008 in I.A.No.1490/2007 in O.S.No.497/2002 whereunder I Additional Senior Civil Judge, Ranga Reddy District allowed the petition filed under Order 9 Rule 13 CPC seeking setting aside the decree & order dated 13-02-2004 in O.S.No.497/2002.

2. Brief facts leading to filing of this revision are as follows:-

Revision petitioners herein are plaintiffs/respondents in

I.A.No.1490/2007. The revision petitioners herein filed suit in O.S.No.497/2002 for partition and for cancellation of sale deed and the same was decreed on 13-02-2004 on exparte basis and one of the defendants i.e., D8 filed I.A.No.1490/2007 to set aside that exparte decree dated 13-02-2004 pleading that he has no knowledge of the suit proceedings and suit summons were not served on him and that he has fair chances in the suit and prayed the trial Court to give an opportunity to him for filing written statement by setting aside the exparte decree. This application was resisted by revision petitioners herein on the ground that D8 has knowledge of the suit proceedings and he intentionally remained exparte. Considering the contentions and rival contentions of both parties, learned trial Judge accepted the version of D8 that he has no knowledge of the suit proceedings and felt that a chance be given to him to defend the suit and for that, costs of Rs.1,000/- are imposed on D8 and allowed the application. Aggrieved by the said order, plaintiffs preferred the present revision.

3. During pendency of the revision, third party- petitioners filed CRPMP No.1728/2009 with a request to implead them as respondent Nos.11 to 67 in the CRP contending that they are the subsequent purchasers of the property involved in the suit.

4. Heard both sides.

5. Advocate for revision petitioners submitted that the trial

Court, without considering the counter averments and without looking into the documents, which are part of the record, carried away with the affidavit of the D8 and shown sympathy towards D8 and allowed the application on costs of Rs.1,000/-. It is submitted that a specific plea is taken in the counter with regard to maintainability of the petition as it is filed without filing a delay condonation petition and also that D8 has full knowledge of the suit proceedings. It is submitted that an Advocate Commissioner is appointed in the said suit in I.A.No.2028/2004, which is filed for passing final decree and the Advocate Commissioner issued notice to this D8 also through courier and as per his report, D8 received the second notice sent by the Advocate Commissioner in the year 2005 itself, but intentionally in the affidavit filed in support of the petition to set aside the exparte decree, D8 contended that he has no knowledge and came to know about the suit only on 03-06-2007, which is apparently incorrect. It is further submitted that when a request is made to the trial Judge to mark the documents like summons issued to D8, notices issued by the Commissioner, Commissioner report etc., without marking those documents, an observation is made that revision petitioners herein failed to show that D8 has knowledge of the suit proceedings. It is submitted that the burden is on D8 to prove that he has no knowledge, but the trial Judge put that burden on the revision petitioners, which is contrary to law, therefore, the order of the trial Court is liable to be set

aside.

6. No arguments are advanced on behalf of the respondents herein.

7. Advocate for impleading petitioners i.e., petitioners in CRPMP No.1728/2009 contended that the proposed parties are subsequent purchasers and they are in possession of the property and they have interest in the suit schedule property and their presence is necessary for adjudicating the rights of the parties. It is submitted that the similar petitions are filed before the trial Court seeking the same relief of impleading them as defendants to the suit.

8. Now the point that would arise for my consideration in this revision is whether the order of Court below is legal, proper and correct?

9. **Point:-** I have perused the material papers including the copies of summons, notice issued by the Advocate Commissioner and report of Advocate Commissioner and copies of the petitions filed by the proposed parties before the trial Court. From the material papers, the main contention of D8 is that he has no knowledge of the suit proceedings and he came to know about the suit only on 03-06-2007. On the contrary, it is a specific case of the plaintiffs that D8 is in knowledge of the suit proceedings and the final decree proceedings and intentionally remained absent and only to

protract the proceedings, he came up with Order 9 Rule 13 application. From the submissions of the Advocate for revision petitioners, the main grievance of the revision petitioners is that their counter allegations were not considered by the trial Court and their request to mark the relevant documents to show that D8 has knowledge of the proceedings is not considered by the trial Court, on the other hand, observed that D8 has to be given a fair chance to get the rights resolved on merits. As seen from the material papers, plaintiffs specially pleaded in their counter about the knowledge of D8 at least in the final decree proceedings by receiving notice from the Advocate Commissioner. When such a specific plea is taken, it is incumbent on the part of the trial Court to verify those allegations from the material papers available on the record and decide whether the objection is tenable or not. But as seen from the impugned order, the trial Court has not at all answered any of the objection taken by the plaintiffs in the counter and decided the application on the basis of affidavit of the petitioner in I.A.No.1490/2007 i.e., D8 which in my view is incorrect and not in accordance with the procedure contemplated for enquiry. On a scrutiny of the material, I feel that the impugned order dated 15-04-2008 cannot be sustained. However, since the grievance of the revision petitioners is that they were not given opportunity to exhibit certain documents, which are very much relevant for the plea taken by them in their counter, I feel that the matter has to be remitted back to the trial Court by setting aside the order

dated 15-04-2008 giving liberty to the revision petitioners to get these documents exhibited on their side and directing the Court below to decide the application afresh, after giving opportunity to both parties i.e., petitioners and respondents and dispose of the application, within three months from the date of receipt of this order. So far as the implead petition is concerned, the application is dismissed giving liberty to them to approach the Court below with appropriate application, which shall be considered independently in accordance with law.

10. With above direction, revision is allowed. No costs.

11. As a sequel, miscellaneous petitions, if any, pending in this revision, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:24.02.2015

Note: Furnish CC within a week.

B/O

mrbb