

HON'BLE SRI JUSTICE A RAMALINGESWARA RAO

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CIVIL REVISION PETITION Nos.1158, 1186, 3015 and 3029 of 2015

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COMMON ORDER:

All these civil revision petitions are being disposed of by this common order, as they arise out of same cause of action.

2. The decree holder/plaintiff is the petitioner in all these cases. The 5th defendant in O.S.No.100 of 2007 on the file of XV Additional District Judge, Nuzvid, filed three applications in the suit, seeking to condone the delay of 122 days in filing the application to set aside the decree, to amend the number of days in the application filed seeking condonation of delay and to set aside the decree dated 18.10.2012. These three applications were allowed by the trial Court by orders dated 01.05.2015, 20.01.2015, and 30.06.2015, respectively. He also filed an application in E.P.No.6 of 2013 seeking stay of all further proceedings in E.P. and the same was allowed on 20.01.2015. Challenging the same, the above civil revision petitions are filed.

3. C.R.P.Nos.3015, 3029 and 1158 of 2015 arise out of orders in I.A.Nos.56 of 2014, 57 of 2014 and I.A.No.733 of 2014 in I.A.No.56 of 2014, respectively.

C.R.P.No.1186 of 2015 arises out of order in E.A.No.688 of 2014 in E.P.No.6 of 2013.

4. In the affidavits filed in support of the applications filed by the 1st respondent herein, who is the 5th defendant, he states that he received suit summons on 04.07.2007 and immediately thereafter, he approached the 1st defendant about execution of the agreement of sale in favour of the plaintiff in the suit, as 5th defendant purchased a part of the plaint schedule property in an extent of Ac.3.28 cents under registered sale deed dated 29.05.2007 from the 1st defendant, who secured General Power of Attorney from the 2nd defendant and his brother, Dasari Venkateswara Rao, and thereupon the 1st defendant stated to the 5th defendant that she is contesting the matter as she did not execute the agreement of sale and believing that statement, the 5th defendant did not attend the Court and did not file the written statement. When the 5th defendant has been enquiring the 1st defendant, he was being told that she has been effectively contesting the suit by adducing relevant evidence. However, when he received caveat petition dated 26.10.2012 from the advocate of the plaintiff, he came to know that the suit was decreed on

18.10.2012. Then, he realized the fraud played by the 1st defendant. When he verified the Court record, he came to know that he was set exparte on 03.08.2007 and the 1st defendant put forth very weak defence.

5. A counter-affidavit is filed by the plaintiff opposing the said applications.

6. It is clear from the facts of the case that though the 5th defendant was set exparte on 03.08.2007, he did not file any application to set aside the said order but now he filed an application seeking to set aside the exparte decree, with a delay of 122 days in filing the application. It is not as if the 5th defendant, who was the petitioner before the trial Court, is without remedy. The trial Court came to the conclusion that the ground stated by petitioner that his not prosecuting the case is on account of believing the version of the

1st defendant is satisfactory and distinguishable and thereby allowed the applications. But, the trial Court ought to have seen that the said ground may be available for setting aside the exparte order but not an exparte decree.

7. It is clear that the 5th defendant did not file any application for setting aside the exparte order, but stating that he was set exparte on 03.08.2007, he sought to set aside the decree on the ground of alleged weak defence

put forth by the 1st defendant. Any defendant, who is not diligent in pursuing the case, would come up with the same plea after passing of a decree. Such type of applications should not be encouraged and hence the impugned orders passed by the trial Court are liable to be set aside.

8. Accordingly, all the Civil Revision Petitions are allowed. There shall be no order as to costs.

9. Miscellaneous applications pending, if any, in these civil revision petitions shall stand closed.

A RAMALINGESWARA RAO, J

Date: 16-12-2015
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