

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Civil Revision Petition No.1437 of 2015

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred by the petitioners-plaintiffs aggrieved by the order passed by the Principal Senior Civil Judge, Visakhapatnam in I.A.No.944 of 2014 in O.S.No.1241 of 2012 dated 09.10.2014.

I.A.No.944 of 2014 was filed by the defendants in O.S.No.1241 of 2012. The said I.A. was filed under Order 8 Rule 1A CPC to receive the registration extract of the sale deed dated 05.08.1926. In the counter filed thereto, the petitioners herein specifically contended that the deponent, of the affidavit accompanying the I.A, was not a party to the Suit; he was a third party; and was, therefore, not entitled to file the said application on behalf of the 3rd defendant.

In the order under revision, the Court below records the contention of the petitioner (different from what was asserted in the counter) that the witness, through whom the document was sought to be marked, was not a relevant person, when the assertion in the counter-affidavit was that the application itself could not be filed by a third party to the Suit. The Court below has not even dealt with the contention as noted in para 8 of its order, and yet the I.A. was allowed.

Sri S.Ram Babu, Learned Counsel for the respondents herein, would contend that an application can be filed even by a third party to the Suit. These are matters which the Court below ought to have examined, and its failure to do so would not justify this Court, in the exercise of its jurisdiction under Article 227 of the Constitution of India, to take upon itself the task of determining whether or not such an application was maintainable. Unlike a

Court of appeal the jurisdiction which this Court exercises, under Article 227 of the Constitution of India, would not justify its undertaking such a task.

As the specific contention urged by the petitioners herein has not been dealt with by the Court below, I consider it appropriate to set aside the order dated 09.10.2014, and remand the matter to the Court below which shall, at the earliest and after affording both parties an opportunity of being heard, pass orders afresh and in accordance with law.

The Civil Revision Petition is, accordingly, disposed of. Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, J)

Date:17.07.2015.

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