

HON'BLE SRI JUSTICE S.V. BHATT
CIVIL REVISION PETITION No.2166 OF 2015

ORDER:

Heard learned counsel for the revision petitioner and Mr.N.Bharath Babu, learned counsel for sole respondent.

The 2nd defendant in O.S. No.115 of 2001 in the Court of I Senior Civil Judge, Nellore, is the revision petitioner. On 30.03.2009, preliminary decree was passed by the trial Court. The respondent herein filed I.A. No.595 of 2010 for passing a final decree in terms of preliminary decree dated 30.03.2005. On 09.08.2010, the revision petitioner was set *ex parte* in I.A. No.595 of 2010. In this context, I.A.No.1139 of 2012 is filed by the revision petitioner to set aside the *ex parte* order dated 09.08.2010 and permit the revision petitioner to participate in the pending final decree proceedings in I.A. No.595 of 2010. The respondent by filing counter opposed the prayer in I.A.No.1139 of 2012. The learned trial Judge through the order impugned has rejected the prayer. Hence revision.

Learned counsel for the petitioner Sri N.Krishna Murthy submits that even as late as 18.02.2015, the final decree proceeding in I.A. No.595 of 2010 is pending and having regard to the fact that no appeal is filed against the preliminary decree dated 30.03.2009, the learned trial Judge ought to have given an opportunity to the revision petitioner to participate in the pending final decree proceedings. Sri N.Bharat Babu, learned counsel appearing for the sole respondent vehemently opposes consideration of any prayer on two grounds, viz., that the reason stated by the revision petitioner is untenable and secondly that the present efforts are pursued by the revision petitioner according to his convenience and if further opportunity is given to the revision petitioner to participate in the pending proceedings in I.A. No.595 of 2010, the final decree is not

passed and the respondent/plaintiff will be further deprived of fruits of preliminary decree dated 30.03.2009.

Perused the material available on record and considered the submissions of learned counsel appearing for the parties.

After perusing the material available on record and considering the submissions of learned counsel for the respondent, this Court does not have a reason to disagree with the findings recorded by the learned trial Judge. But the circumstances which weigh in considering the prayer in favour of revision petitioner is that I.A. No.595 of 2010 filed for passing a final decree is still pending before the trial Court. On 09.08.2010, the revision petitioner was set *ex parte* and the consequence of *ex parte* order is well defined. To avoid perpetual litigation on further technical or procedural grounds, though this Court is in agreement with the findings recorded by the learned trial Judge, to meet the ends of justice and afford an opportunity to revision petitioner, opportunity is afforded to the petitioner. Hence the order in I.A. No.1139 of 2012 is set aside subject to the condition of revision petitioner depositing a sum of Rs.5,000/- (Rupees five thousand only) to the credit of District Legal Services Authority, Nellore, within a period of four weeks from today.

On such deposit, the revision petitioner shall file proof of compliance along with a copy of this order before the trial Court. The trial Court affords an opportunity to the revision petitioner in I.A. No.595 of 2010 and is further directed to positively dispose of the pending final decree proceedings in I.A. No.595 of 2010 within a period of three months from the date of filing of proof as stated supra. If the conditional order is not complied with as directed by this Court within the given time, without further reference to the Court, order now passed is deemed to have been discharged.

With the above directions, the C.R.P. is allowed. No order as to costs.

Miscellaneous petitions, if any, pending in the C.R.P. shall stand closed.

S.V.BHATT,

J

Date:26.06.2015

Stp