

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CRP.Nos.2846 and 2848 of 2015

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COMMON ORDER:

Since these two revisions arise out of one suit and are interrelated, the same are heard together and disposed of by this common order.

2. Plaintiff in O.S.No.68 of 2013, on the file of the I Additional District Judge, Ongole, is the petitioner in these revisions.

3. CRP.2846 of 2015, assails the order dated 24.06.2015, passed in I.A.No.780 of 2015. CRP.No.2848 of 2015 challenges the order dated 24.06.2015 passed in I.A.No.1179 of 2015 in I.A.No.780 of 2015.

4. The Court of the First Additional District Judge, Ongole, dismissed O.S.No.68 of 2013 instituted by the petitioner herein against the respondents for declaration and possession of the suit schedule property admeasuring 0.97 cents situated in Sy.No.138/3 of Pernamitta, Prakasam District.

5. Praying for restoration of the said suit, plaintiff/petitioner herein, filed I.A.No.780/2015 and the learned Additional District Judge, by way of an order dated 12.06.2015, allowed the said application subject to payment of costs of Rs.200/- to the District legal Services Authority, Ongole and also on the condition of adducing evidence on 24.06.2015 with a default clause.

6. Subsequently, petitioner herein paid the costs and filed an application vide I.A.No.1179 of 2015 under Section 148 read with Section 151 of the Code of Civil Procedure, seeking condonation of absence of the plaintiff/petitioner and for relaxation of the condition imposed in I.A.780 of 2015 and to adjourn the suit to some other date. The learned Additional District Judge, by way of an order dated 24.06.2015, dismissed the said application. In the above back ground, the present revisions have been filed under Article 227 of the Constitution of India.

7. Heard Sri Y.V.Anil Kumar, learned counsel for the petitioner and Sri I.Koti Reddy, learned counsel for the respondents apart from perusing the

material available before the Court.

8. It is contended by the learned counsel for the petitioner that the orders under revisions passed by the Court below are erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Code of Civil Procedure. It is the further submission of the learned counsel for the petitioner that the learned First Additional District Judge did not take into consideration the averments made in the affidavit filed in support of the application seeking extension of time, and had the contents of the supporting affidavit been considered from proper perspective, the orders impugned would not have emanated. It is further argued by the learned counsel for the petitioner that the impugned orders are completely devoid of any reasons.

9. Per contra, it is vehemently contended by the learned counsel for the respondents that there is no illegality nor any procedural infirmity in the orders under challenge and in the absence of the same the present revisions are not maintainable and the petitioner herein is not entitled for any indulgence of this Court under Article 227 of the Constitution of India.

10. In the above background, the issue that arises for consideration of this Court is "Whether the orders under challenge are sustainable and tenable and whether the petitioner herein is entitled for any indulgence of this Court under Article 227 of the Constitution of India.

11. The information available before this Court candidly discloses that the petitioner herein instituted the instant suit for declaration of title and recovery of possession in respect of the immovable property admeasuring 0-97 cents situated in Pernamitta village of Prakasam District. The learned First Additional District Judge dismissed the said suit for default on 31.03.2015 and praying for restoration of the said suit, the petitioner herein within the stipulated time, filed I.A.No.780/2015. It is also a fact, as evident from the material available before this Court, that the defendants did not file any counter, opposing the said application. The learned First Additional District Judge on 12.06.2015 allowed the said application subject to payment of costs of Rs.200/- with a further direction to the plaintiff to adduce evidence on 24.06.2015. There is also no controversy with regard to the fact that in compliance of the directions contained therein, the plaintiff/petitioner herein paid the costs within the time and also filed an affidavit in lieu of chief examination as PW.1. The

plaintiff/petitioner herein also filed application bearing I.A.No.1179 of 2015 under Section 148 of the Code of Civil Procedure, seeking condonation of absence of the petitioner and to relax the condition imposed in I.A.No.780 of 2015 for adducing evidence on 24.06.2015 and also requested to adjourn the suit to some other date.

12. In the affidavit filed in support of I.A.No.1179 of 2015, it was stated that in view of the old age and high B.P, the petitioner herein was unable to come to the Court and as such she sent her relative to the office of the advocate to inform the same to the learned advocate to place it before the Court. It was also requested in the said affidavit to adjourn the matter to some other date. It was also stated in the said affidavit that the Principal District Judge ordered transfer of the suit to the Court of the VII Additional District Judge vide Tr.OP.No.34/2015 on 19.06.2015. The learned First Additional District Judge passed an order on 24.06.2015, dismissing I.A.1179/2015 on the ground of absence of sufficient grounds and obviously as a consequence of the same also dismissed I.A.780 of 2015 on the even date.

13. A perusal of the order passed by the learned Additional District Judge, dismissing I.A.1179 of 2015, in clear and unequivocal terms, discloses that the learned First Additional District Judge did not advert to the contents of the affidavit filed in support of the application. This, in the considered opinion of this Court, cannot be sustained nor can be countenanced. In the considered opinion of this Court, the learned judge ought to have taken into consideration the averments in the supporting affidavit and ought to have recorded reasons for rejecting the same. The said exercise is conspicuously absent in the present case. It is also significant to note that the relief in the instant case is one for declaration of title and recovery of possession in respect of immovable property. Since the valuable property rights are involved, the learned judge grossly erred in dismissing the application without recording any reasons whatsoever.

14. In view of the above reasons, this Court has absolutely no scintilla of hesitation to hold that the impugned orders are neither sustainable nor tenable in the eye of law.

15. For the aforesaid reasons, the revisions are allowed, setting aside the impugned orders dated 24.06.2015 passed in I.A.No.780 of 2015 in O.S.No.68 of 2013 and I.A.No.1179 of 2015 in I.A.No.780 of 2015 in O.S.No.68 of 2013 and consequently I.A.No.780 of 2015 and I.A.No.1179 of 2015 are allowed and the suit is restored to

file and the Court below is directed to give opportunity to the petitioner herein to adduce evidence by fixing a date. As a sequel, pending miscellaneous petitions, if any, shall stand disposed of. No costs.

A.V.SESHA SAI, J

Date:06.11.2015

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Dated:06.11.2015

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