

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

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CIVIL REVISION PETITION Nos.4592 and 4593 of 2015

BETWEEN

B. Vengama Naidu and another.

... PETITIONERS

AND

V. Hemantha Naidu and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 01.12.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

1. Whether Reporters of Local newspapers may be No
allowed to see the Judgments?
2. Whether the copies of judgment may be marked No
to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to see the No
fair copy of the Judgment?

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ORDER:

These two revision petitions are filed by the same petitioners arising out of O.S.No.292 of 2014 on the file of the Additional Senior Civil Judge, Tirupati.

2. In the said suit for partition, the petitioners are defendants

4 and 5 and they were set *ex parte* in the suit as well as in the interlocutory application, I.A.No.447 of 2014, which was filed by the plaintiff seeking temporary injunction pending the suit. Since the petitioners did not file written statement within the time prescribed, they were set *ex parte* on 09.09.2014 in the suit as well as in the injunction petition. Hence, petitioners filed two separate applications, I.A.Nos.1283 and 1284 of 2014, seeking to set aside the *ex parte* order in the suit as well as in I.A.No.447 of 2014. Both the said applications were contested by the respondent/plaintiff and were dismissed by separate orders of the Court below dated 28.09.2015, which are respectively questioned in these revisions.

3. I have heard learned counsel for the petitioner and Mr. Thoom Srinivas, learned counsel for the first respondent/plaintiff.

4. The affidavit of the petitioners in support of the applications to set aside *ex parte* order avers that because of ill-health, the petitioners could not engage a counsel and after coming to know that they were set *ex parte*, the present applications were filed requesting for an opportunity to be provided to

contest the suit.

5. Learned counsel for the respondent/plaintiff contends that the aforesaid averment itself is factually incorrect inasmuch as even as per the impugned order, the petitioners had engaged a counsel on 19.06.2014 and even after repeated adjournments, the written statement was not filed and ultimately, they were set *ex parte* on 09.09.2014.

6. Learned counsel for the petitioners tries to explain the said default by claiming that there was a typographical mistake and instead of stating that because of ill-health, the petitioners could not instruct the counsel, it was typed as petitioners could not engage counsel.

7. In any case, since the vakalath on behalf of the petitioners was filed on 19.06.2014, there is default in not filing the written statement and counter in the suit as well as in IA by the petitioners on account of which they were set *ex parte*. However, keeping in view that the suit is in the nature of seeking partition and that the petitioners claim that they have valuable right and substantial case to urge in the suit and in the IA, in the interest of substantial justice, I deem it appropriate to set aside the *ex parte* impugned orders and permit the petitioners to participate in the suit, as the written statement is stated to have already been filed along with I.A.Nos.1283 and 1284 of 2014 in question. However, for the default and non-filing of written statement, petitioners have to pay costs of Rs.5,000/- (Rupees Five Thousand only) to the credit of the suit on or before 30.12.2015 and subject to compliance of the aforesaid condition, the Court below shall receive the written statement filed by the petitioners and proceed with the hearing of the suit further in accordance with law.

The civil revision petitions are allowed subject to the condition of the petitioners paying the costs, as aforesaid. As a sequel,
the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

December 1, 2015

DSK