

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

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CIVIL REVISION PETITION Nos.1130 and 1250 of 2015

Between:

M.Krishna Reddy and others.

....Petitioners

and

M.Mahesh Kumar and others.

....Respondents

JUDGMENT PRONOUNCED ON : 22.12.2015

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

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

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION Nos.1130 and 1250 of 2015

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COMMON ORDER:

The petitioners are the claim petitioners in O.S.No.580 of 2003 on the file of the learned Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar. The said suit was filed by the first respondent herein against respondent Nos.2 to 6 seeking specific performance of Agreement of Sale dated 27.08.1991, Supplementary Agreement dated 18.12.1995 and the Extension Agreement dated 11.10.2000 in respect of the agricultural land admeasuring Acs.9.39 guntas i.e., Survey No.95 - an extent of Acs.4.00, Survey No.96 - an extent of Ac.1.04 guntas, Survey No.97 - an extent of Ac.1.28 guntas, Survey No.98 - an extent of

Ac.1.13 guntas and Survey No.99 - an extent of Ac.1.34 guntas, situated at Medipally Village, Uppal Mandal in Ranga Reddy District. Even as on the date of the filing of the suit, the first defendant died issueless leaving behind him other family members who are defendant Nos.3 to 5. The second defendant also died even prior to the filing of the suit on 26.05.1990. Though a written statement was filed by the third defendant, which was adopted by the fourth defendant, they did not contest the suit thereafter. The fifth defendant remained *ex parte*. Thus, the suit was decreed *ex parte* on 15.07.2009. During the pendency of the said suit, the petitioners herein filed I.A.No.601 of 2007 seeking their impleadment as parties to the suit on the ground that they are the owners of the property in question having purchased the same under registered sale deeds from the GPA holder of the deceased first defendant. But, the said application was dismissed by the trial Court on 02.03.2009. The petitioners did not take any steps for challenging the said order.

The first respondent herein filed E.P.No.317 of 2009 and the petitioners herein filed a claim petition in E.A.No.80 of 2013 under Order 21 Rule 97 of CPC claiming their title to the property. They filed an affidavit in lieu of chief examination on 16.09.2013. It was posted to 24.09.2013 and at the request of the petitioners it was adjourned from time to time and lastly to 29.04.2014. Since the petitioners did not turn up on that day, the claim petition was dismissed for default. Thereafter, the petitioners filed E.A.No.190 of 2014 seeking condonation of delay of 60 days in filing the petition to restore E.A.No.80 of 2013. They also filed E.A.No.255 of 2014 seeking to set aside the order dated 29.04.2014. Both the applications were dismissed by separate orders dated 19.12.2014, challenging which the present Civil Revision Petitions are filed.

The first respondent died during the pendency of these Civil Revision Petitions and his legal representatives, respondent Nos.7 to 10, are brought on record.

The petitioners, in support of their application seeking condonation of delay, stated that at the time of filing the claim petition, they filed number of documents, which were only Xerox copies, and subsequently they obtained the certified copies of the said documents. They filed those documents along with the application. They further stated that they could not attend the Court on 29.04.2014 as they were under the impression that their claim petition was coming up for arguments, and their absence on that day was neither willful nor deliberate. A counter affidavit was filed by the first respondent herein stating that no reason was assigned for the non-appearance on the said date i.e., on 29.04.2014. The lower Court dismissed E.A.No.190 of 2014 with the following observations:

“6. As seen from the record the claim petitioners already issued complaint against the superintendent and bailiff they are facing departmental enquiry and criminal case was registered against the court bailiff the superintendent since the decree holder filed EP 317/09 to execute the sale deed on behalf of the Judgment debtor in terms of the decree. Hence if the claim petitioners are having any strong case they sought to have been contested the EA 80/13 but instead of contesting the EA they are filing cases only to threaten the officials not to execute the document. The attitude of the petitioners clearly appears on the record only to stall execution which could not be encouraged.

7. The reason for delay shown by the petitioner is that the delay occurred in obtaining certified copies but the petitioner filed CC of Sl.No.1 to 38 documents along with the petition more over the petitioner also filed document petition along with the copies of police complaint and correspondence with the register Xerox copies along with EA 189/14 hence the ground shown by the petitioners is not sufficient cause to condone the delay hence petition is dismissed.”

Similarly, the affidavit filed in support of the application in E.A.No.255 of 2014 and the counter affidavit of the first respondent are also on the same lines. The said application was dismissed by the Executing Court observing as follows:

“6. As seen from the record the claim petitioners already issued complaint against the superintendent and bailiff they are facing departmental enquiry and criminal case was

registered against the court bailiff the superintendent since the decree holder filed EP 317/09 to execute the sale deed on behalf of the Judgment debtor in terms of the decree. Hence if the claim petitioners are having any strong case they sought to have been contested the EA 80/13 but instead of contesting the EA they are filing cases only to threaten the officials not to execute the document. The attitude of the petitioners clearly appears on the record only to stall execution which could not be encouraged.

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The petitioners herein claimed title to the property under registered sale deeds of the year 2000 and those sale deeds were executed by the GPA holder of the deceased first defendant when he was alive. The sales were subsequently ratified by the first defendant by executing ratification deeds in the year 2001. Their names were also mutated in the revenue records by the orders of the Mandal Revenue Officer, Ghatkesar Mandal, dated 01.02.2001. They were also given pattadar pass books and title deeds by the said Mandal Revenue Officer. Thus, valuable rights are involved in the matter and the learned Counsel for the petitioners submits that he could not give the reasons in the affidavit for their absence on 29.04.2014 due to mischief played by the Junior Counsel, whom he does not want to involve in the present proceedings.

Since the petitioners are claiming their right under registered sale deeds, this Court wants to give them a final opportunity to contest the matter even though they have not properly explained the delay of 60 days in filing the petition to set aside the *ex parte* order. Though the learned Counsel for the first respondent vehemently opposed, this Court feels that allowing of the applications would be in the interest of the first respondent also as it may decide the rights between the parties once for

all.

In the circumstances, the Civil Revision Petitions are allowed on costs of Rs.10,000/- (Rupees ten thousand only) in each case payable to respondent Nos.7 to 10 within a period of fifteen days from the date of receipt of a copy of this order. The Executing Court shall consider E.A.No.80 of 2013 in accordance with law and dispose of the same on or before 30.04.2016. If the parties are represented by the Counsel, both the Counsel are requested to cooperate for the disposal of the matter.

The Civil Revision Petitions are, accordingly, allowed with costs, as stated above. The miscellaneous petitions pending, if any, shall stand closed.

(A.RAMALINGESWARA RAO, J)

22.12.2015

vs