

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.4041 of 2015

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ORDER:

The legal representatives of petitioner No.1 herein filed the present Civil Revision Petition. Petitioner No.1, who expired by the date of passing of the order in I.A.No.132/2010, was the original defendant No.3 in O.S.No.1648/2005 on the file of the Court of the learned Principal Senior Civil Judge, Rangareddy District.

Respondent No.1 herein filed the said suit seeking specific performance of the agreement of sale dated 14.02.2003 against the respondents 2 and 3 herein originally. Subsequently, defendant No.3 was brought on record by virtue of the orders in I.A. No.1762/2006. Defendant No.3 engaged a counsel, who filed vakalat on 17.06.2008, and the case was posted for written statement on 17.07.2008. Thereafter, defendant No.3 did not file any written statement nor contested the suit. He was set *ex parte*. The original defendants 1 and 2 also did not contest the suit and an *ex parte* decree was passed on 14.11.2008. Thereafter, I.A.No.132/2010 was filed by defendant No.3 on 21.10.2009 seeking condonation of delay of 374 days in filing the petition for setting aside the *ex parte* decree dated 14.11.2008, and the said matter came up for consideration before the Court on 19.07.2013. In the meanwhile, defendant No.3 expired on 09.02.2010. The said fact was not brought to the notice of the Court either by the counsel for plaintiff or by the counsel for defendant No.3, and no application was filed by the present petitioners 2 to 4 in the said I.A. to come on record as legal representatives. In those circumstances, the learned Principal Senior Civil Judge, Rangareddy District, dismissed the application in I.A. No.132/2010 on merits observing that no sufficient cause was shown by the original defendant No.3 to condone the delay of 345 days.

Learned counsel for respondent No.1/plaintiff submits that respondent No.3 herein filed O.S. No.2641/2010 on the file of the Court of the learned VII Senior Civil Judge, City Civil Court, Hyderabad, seeking recovery of amount against

the petitioners 2 to 4 herein, and the petitioners 2 to 4 herein filed written statement on 26.07.2011 with regard to *ex parte* decree passed in the present suit and stating that final decree proceedings are pending. In view of the same, learned counsel for respondent No.1 submits that it cannot be said that the petitioners 2 to 4 are not aware of the pendency of present proceedings and when they are aware of the present proceedings, they should have filed an appropriate application for coming on record immediately after the death of original defendant. A portion of the written statement, filed by the petitioners 2 to 4 herein in O.S. No.2641/2010, reads as follows:

“3. It is relevant to mention here that Plaintiff herein with a malafide intention to make wrongful gain has sold the above said property bearing No.8-6-59/A in Survey no.156/2, situated at Mailardevpally Village, Rajendernagar Mandal, Ranga Reddy District, to the father of the Defendants through registered sale deed vide document No.11611/2005 dated 8-11-2005. It is submitted that one Smt. A.Parvathamma had filed a suit O.S. No.1648 of 2005 against Smt. Mamidishetty Laxmi and Plaintiff herein for specific performance of Agreement of sale in respect of the above said property, claiming that owner of the above said property Smt. Mamidshetty Laxmi had first entered into an Agreement of sale with her and subsequently sold the said property to the Plaintiff herein. Subsequently father of the Defendant who became owner by virtue of sale deed executed by Plaintiff herein was impleaded in the said suit as Defendant No.3. The said suit was decreed and final decree proceedings are pending.”

In view of the above, it cannot be said that the petitioners 2 to 4 were not aware of the pendency of present proceedings in O.S.No.1648/2005. Taking that fact into consideration, this Court records that the application in I.A. No.132/2010, filed by the original defendant No.3 as petitioner, stood abated.

Accordingly, this Civil Revision Petition is disposed of. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

02.12.2015

MVA

