

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5519 of 2015

ORDER:

Assailing the order dated 11.09.2015 passed in I.A.No.816 of 2013 in O.S.No.164 of 2012 on the file of the Additional Senior Civil Judge, Karimnagar, the present Civil Revision Petition is filed.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in the suit.

The facts in issue are as under:

The petitioner/plaintiff filed O.S.No.164 of 2012 seeking partition of the suit schedule property. The father of the plaintiff was having two wives namely Sailla Mallamma and Sailla Ambamma. The plaintiff and defendant No.3 are the son and daughter of Lingaiah through Sailla Mallamma and defendant Nos.1 and 2 are the sons through Sailla Ambamma. When defendant Nos.1 and 2 were set *ex parte*, they filed I.A.No.816 of 2013 seeking to set aside the *ex parte* order passed against them on 22.11.2012. In the said I.A. defendant Nos.1 and 2 stated that after service of summons they approached their advocate and signed the vakalath on 03.10.2012, but due to illness and old age ailments, could not approach their advocate to enquire about their case and same went un-represented. It is stated that since they have a strong case on merits and they are ready to proceed with the case by filing the written statement.

A counter came to be filed by the plaintiff disputing the averments made in the affidavit filed in support of the petition. It

is stated that the counsel for defendant Nos.1 and 2 filed his vakalath and appeared before the Court number of times. It is stated that one P.Lachi Reddy, who was the counsel for the defendants, came to the Court on 22.11.2012 and represented in number of cases in the same Court. It is stated that the averments in the affidavit filed in support of the I.A. run contrary to the record and as such defendant Nos.1 and 2 are liable for prosecution. It is also stated that the defendants have not filed any documents to show their illness which made them not to enquire about the case with their counsel. After considering the rival submissions, the trial Judge allowed the I.A. on payment of costs of Rs.250/- to other side and further directed them to file written statement by the next adjournment itself, with a default clause. Thereafter, the matter was directed to be called on 13.10.2015. Challenging the said order, the plaintiff preferred the present Civil Revision petition.

Learned counsel for the petitioner/plaintiff would submit that the defendants have not complied with the order dated 11.09.2015 by paying Rs.250/- to the other side and also failed to file the written statement within the time stipulated. It is his case that instead of paying the amount to the other side, the defendants deposited the same before the Legal Services Authority which amounts to non-compliance of the order. It is also his case that the defendants have been changing the counsels one after the other and without obtaining no objection certificate from the previous lawyers, vakalats are being filed before the Court, which itself is sufficient to dismiss the petition.

On the other hand, the learned counsel for the respondents/defendants submits that the C.R.P. itself is not

maintainable. In support of his case, he relied upon the judgments of this Court in ***Korvati Subbamma v. Pinnapureddi Subbaiah***^[1] and in ***B.Umamaheswara Rao v. The Government of Andhra Pradesh, rep. by the District Collector, Krishna***^[2].

He further submits that the allegation of amount of Rs.250/- being not paid is incorrect since the same was deposited before the District Legal Service Authority, Karimnagar as the plaintiff's counsel was not available on the said date.

The main ground urged by the learned counsel for the petitioner is that under Order 3 Rule 4 of C.P.C. no objection from the previous counsel has to be obtained before filing vakalath. It would be useful to refer to the said provision which is as under:

“4. Appointment of Pleader: (i) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

Explanation: For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,

- (a) an application for the review of decree or order in the suit;
- (b) an application under Section 144 or under Section 152 of this Code, in relation to any decree or order made in the suit;
- (c) an appeal from any decree or order in the suit; and
- (d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of

moneys paid into the Court in connection with the suit.

(3) Nothing in sub-rule (2) shall be construed –

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged; or

(b) as authorizing service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1).

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating –

(a) the names of the parties to the suit;

(b) the name of the party for whom he appears; and

(c) the name of the person by whom he is authorized to appear.

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.

A reading of the said provision clearly discloses that the said provision, which has been relied upon by the learned counsel for the petitioner, deal with the appointment of pleader. The said provision does not anywhere refer to obtaining no objection from the previous counsel if the said counsel failed to take any interest after having accepted the brief from his client. Even otherwise, the said discrepancy cannot be said to be of such nature which should go to the root of the matter, more so in a case of this

nature which has been instituted for partition of suit schedule properties.

A perusal of the material on record, more particularly the documents placed by the learned counsel for the petitioner would show that defendant Nos.1 and 2 deposited a sum of Rs.250/- on 13.10.2015 before the District Legal Services Authority, Karimnagar. A memo to that effect was also filed before the trial Court on the very same day. In the said memo it was stated that the amount could not be paid to other side as the counsel was not available.

As seen from the impugned order, defendant Nos.1 and 2 were directed to pay costs on or before 13.10.2015. Since it was a last day and as the counsel for the other side was not available, the said amount was deposited before the District Legal Services Authority. The said explanation being acceptable warrants no interference. Therefore, it cannot be said that no amount was deposited within the time stipulated by the Court. It is stated by the learned counsel for defendant Nos.1 and 2 that even now his clients are ready to pay additional amount of Rs.250/-, in spite of compliance of the order.

As stated earlier, an amount of Rs.250/- was deposited before the District Legal Services Authority and a receipt to that effect along with a memo explaining the reasons as to why they could not pay the amount to the other side was filed before the trial Court, which was accepted. Having regard to the circumstances, it cannot be said that the defendants have not complied with the order.

At this stage, learned counsel for the petitioner submits that

the defendants have not complied with the other portion of the impugned order ie. filing of the written statement within the stipulated time. The said aspect need not be gone into since the trial Court will take care of situation if the written statement was not filed by 13.10.2015.

For the aforesaid reasons, this Court finds that there are no merits in the Civil Revision Petition and the same is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

04.02.2016
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[\[1\]](#) 1958 An.W.R. 542

[\[2\]](#) 1977 (1) APLJ 218