

THE HON'BLE SRI JUSTICE A.V. SESA SAI
CIVIL REVISION PETITION Nos.2846 and 2860 of 2011

COMMON ORDER:

Since the petitioner in both these revisions is the same and as these revisions arise out of one Appeal Suit, this Court deems it apposite to dispose of the present revisions by way of this common order.

The plaintiff in O.S.No.1045 of 1983 on the file of VII Addl. District Munsif, Visakhapatnam is the petitioner in these revisions. In C.R.P.No.2846 of 2011 challenge is to the order, dated 02-07-2011 passed by the Court of IX Addl. District Judge (F.T.C.), Visakhapatnam in I.A.No.419 of 2008 in A.S.No.83 of 1989. In C.R.P.No.2860 of 2011 challenge is to the order, dated 02-07-2011 passed by the Court of IX Addl. District Judge (F.T.C.), Visakhapatnam in I.A.No.418 of 2008 in A.S.No.83 of 1989.

The facts and circumstances leading to filing of these revisions are as under:

The petitioner herein instituted O.S.No.1045 of 1983 on the file of the Court of VII Additional District Munsif, Visakhapatnam for declaration of title and possession. The said suit was dismissed on 20-02-1989. Thereafter the plaintiff preferred A.S.No.83 of 1989 on the file of the Court of III Additional District Judge, Visakhapatnam. Initially the said appeal was dismissed for default on 27-06-1995. Subsequently, the plaintiff/petitioner herein filed I.A.Nos.1251 and 1375 of 2005 for restoration of appeal and for

condonation of delay in filing the restoration application. The said Interlocutory Applications were allowed and eventually on 15-12-2006, A.S.No.83 of 1989 was allowed, decreeing O.S.No.1045 of 1983. Thereafter the plaintiff/ petitioner herein filed E.P.No.98 of 2007 and according to the petitioner, the property was also delivered on 01-05-2007 and the E.P. was closed on 04-05-2007.

Subsequently, the 1st defendant/1st respondent herein filed I.A.No.418 of 2008 and I.A.No.419 of 2008, praying the court below to set aside the orders passed earlier in I.A.Nos.1251 and 1375 of 2005. The IX Addl. District Judge (F.T.C.), Visakhapatnam by virtue of a common order, dated 02-07-2011 allowed the said I.As. while directing both sides to cooperate the Court for early disposal of the appeal. The said orders passed by the IX Addl. District Judge (F.T.C.), Visakhapatnam are under challenge in these revisions.

Heard, Sri N. Ravi Prasad, learned counsel for the petitioner and Sri V.B. Subrahmanyam, learned counsel for the respondents, apart from perusing the material available before this Court.

It is contended by learned counsel for the petitioner that the orders passed by the leaned District Judge are erroneous, contrary to law and opposed to the provisions of Code of Civil Procedure. It is further submitted that without assailing the decree granted by the lower appellate court, it is not open for the 1st respondent/1st defendant to file the present applications to set aside the orders passed earlier in I.A.Nos.1251 and 1375 of 2005.

On the contrary, it is vehemently contended by learned

counsel for the respondents that there is no illegality nor there exists any procedural infirmity in the impugned orders and in absence of the same the present revisions filed under Article 227 of the Constitution of India are not maintainable and the petitioner herein is not entitled for any indulgence of this Court. It is further submitted by learned counsel for the respondents that in view of the orders passed in C.R.P.Nos.672 and 673 of 2009 the present revisions cannot be maintained.

In the above backdrop, now the issues which this Court is called upon to answer in the present revisions are:

1. *Whether the orders under challenge are in accordance with law?*
2. *Whether the impugned orders warrant any interference of this Court under Article 227 of the Constitution of India?*

POINTS: The information available before this Court candidly discloses that the learned District Judge allowed I.A.Nos.1251 and 1375 of 2005 filed by the plaintiff/ petitioner herein for restoration of the appeal dismissed for default and for condonation of delay in filing the said application. There is also no dispute with regard to the reality that the said Appeal Suit No.83 of 1989 was allowed on 15-12-2006 by the lower appellate Court, decreeing the suit instituted by the petitioner herein.

According to the learned counsel for the petitioner, the subject property was delivered on 01-05-2007 in E.P.No.98 of 2007 and the said E.P. was also closed.

A perusal of the impugned common order shows that the

learned District Judge did not make any endeavour to consider the aspect of maintainability of the applications after passing of decree by the lower appellate Court.

The contention of the learned counsel for the respondents that in view of the orders in C.R.P.Nos.672 and 673 of 2009 the petitioner herein cannot maintain the present revisions and the Court below is perfectly justified in passing the impugned order, in the considered opinion of this Court cannot be sustained. This Court in the said revisions found that ordering notices to the respondents therein could not be found fault with and the said order passed by this Court did not permit the petitioner to agitate the validity of the appellate decree without reference to the procedure contemplated under the Code of Civil Procedure.

In the considered opinion of this Court the applications filed by the 1st respondent herein are not maintainable in view of the decree already passed by the lower appellate Court. It is also important to note that there are other provisions of Code of Civil Procedure under which the 1st respondent herein can ventilate his grievance.

For the aforesaid reasons, the Civil Revision Petitions are allowed, setting aside the common order, dated 02-07-2011 passed by the Court of IX Addl. District Judge (F.T.C.), Visakhapatnam in I.A.Nos.418 and 419 of 2008 in A.S.No.83 of 1989. It is needless to observe that the 1st respondent herein is entitled to avail the remedies open under the provisions of Code of Civil Procedure. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in these

Civil Revision Petitions shall stand closed.

A.V. SESA SAI, J

March 23, 2016

Pn

-

-

-

-

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

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

CIVIL REVISION PETITION Nos.2846 and 2860 of 2011

-

March 23, 2016

-

Pn

-