

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.1059 of 2015

Date: 05-01-2016

Between:

Mandepudi Venkata Madhusudhana Rao and
3 others

.. Petitioners

AND

Vudemadalu Venkata Subbamma and another

.. Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.1059 of 2015

ORDER:

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The petitioners are respondents in A.S.No.95 of 2013 on the file of XVI Additional District Judge, Nandigama, Krishna District. The respondents herein filed the appeal against the judgment and decree in O.S.No.130 of 2005 on the file of Junior Civil Judge, Nandigama. The said suit was filed for declaration that the registered sale deed dated 03-12-2004 executed by the 1st defendant in favour of the 2nd defendant is void, inoperative and not binding. The said suit was decreed on 05-10-2012. Challenging the same, the appeal was preferred. Initially before the Court of Senior Civil Judge, Nandigama in A.S.No.20 of 2012, the petitioners 2 and 3 were set ex parte on 31-12-2012 and the 1st petitioner was set ex parte on 07-12-2013. They filed an application in I.A.No.752 of 2014 stating as follows:

“.....I humbly submit that no notice was served by the Hon'ble Senior Civil Judge, Nandigama in the said Appeal. The endorsement discloses that he refused to receive the registered post. In fact we are residing in Mylavaram Town and Mandal, Krishna District since the year 2009 for the purpose of education of my son, who is the 3rd petitioner herein. But the court notices were sent to Gummadidurru village, which is our native village. So that we have not received the notices issued by the Honourable Senior Civil Judge, Nandigama. We have shifted our residence from Mylavaram Town to Gummadidurru village in the last week of July, 2014 as the education of my son was completed and I approached my counsel in Lower Court on 30-08-2014 and enquired about the stage of my case. He informed me that the respondents preferred the above appeal against the decree and judgment dated 5-10-2012 passed by the Lower Court and we were set ex parte in the appeal.....”

In view of the above averment, this Court called for the original record from the Court of XVI Additional District Judge, Krishna, Nandigama to which the appeal was transferred, numbered and is being heard as A.S.No.21 of 2013. The record revealed that the Process Server served the notice on the petitioners 2 and 3 on

26-12-2012 and the 1st petitioner on 29-01-2013. In the circumstances, the above affidavit filed in support of the application on behalf of the petitioners is a misrepresentation of facts. The Court below dismissed the application by holding as follows:

“.....The object of the petitioner by filing this petition appears to mislead the Court. The contents in the affidavit of the petitioner are far away from truth. There is no explanation in the petition why the petitioners 2 and 3 though received the summons, not appeared before the Court and allowed the Court to set them exparte. It is not the case of the petitioners that the petitioners 2 and 3 also not received the notices from the Court. Record reveals that Process Server K. Venkateswara Rao served the notices on the petitioners 2 and 3 on 26.12.2012 and furnished the duplicate copy of appeal.

Though the docket dated 7.2.2013 shows that the

respondent/ first petitioner refused to receive the notice, apart from that endorsement by the learned Senior Civil Judge, record further reveals that the notice through Court served on the first petitioner on 29.1.2013. The copy of memorandum of appeal was also received by the first petitioner. Summons were returned by N. Narayana Rao, Process Server. So though the petitioners duly served with notices in the appeal, they came forward with false contentions that no notices were served. Since the contention of the petitioners is far away from truth, as they served with the notices in the appeal, this application is liable to be dismissed. Exparte orders passed against the petitioners cannot be set aside. Point answered accordingly.....”

In the light of the averments made in the affidavit filed in support of the application and after verifying the original court record, which is called for in this case, this Court sees no reason to interfere with the order dated 23-01-2015 passed in I.A.No.752 of 2014 in A.S.No.95 of 2013. Hence, the Civil Revision Petition is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed with costs of Rs.1000/- (Rupees one thousand only) payable to the learned counsel for the respondents/appellants within 30 days from today.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 05-01-2016

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