

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.3434 OF 2010

ORDER

This Civil Revision Petition under Section 115 CPC arises out of the order dated 31.08.2007 passed by the learned V Additional District Judge, Guntur, in C.M.A.No.45 of 2005 which, in turn, arose out of the order dated 20.09.2005 of the learned Principal Senior Civil Judge, Tenali, in I.A.No.1469 of 2002 in O.S.No.151 of 1996.

The petitioners are defendants 2 to 4 in the said suit, which was filed for a declaration that the sale deeds dated 10.10.1995 executed by one Chittibomma Musalamma were invalid and for partition of the plaint schedule properties. The suit was decreed *ex parte* on 23.09.2002. I.A.No.1469 of 2002 was thereupon filed by defendants 2 to 4, the petitioners herein, under Order 9 Rule 13 CPC to set aside the said decree. By order dated 02.08.2005, the trial Court allowed the I.A., subject to the condition that the petitioners therein deposit the suit costs on or before 30.08.2005. Subject to compliance with this condition, the petitioners in the I.A. were also given liberty to cross-examine P.W.1 on the same day and were directed to expedite further proceedings in the suit without further delay. When the I.A. was taken up on 20.09.2005, there was no representation for the petitioners in the I.A. Thereupon, the trial Court passed the following order:

‘Petitioner called absent. No representation till 5.15 p.m.
Petition is dismissed for default. No costs.’

Aggrieved by the order dated 20.09.2005 passed by the trial Court dismissing I.A.No.1469 of 2002 in O.S.No.151 of 1996 for default, defendants 2 to 4 in the suit filed C.M.A.No.45 of 2005 before the learned V Additional District Judge, Guntur. By order dated 31.08.2007, this appeal was dismissed. Aggrieved thereby, defendants 2 to 4 are before this Court by way of this revision.

By order dated 28.11.2008, this Court granted interim stay of all

further proceedings in O.S.No.151 of 1996 before the learned Principal Senior Civil Judge, Tenali, Guntur District, including passing of the final decree. However, the revision was dismissed for non-prosecution on 28.01.2011. C.M.P.No.1595 of 2011 was thereupon filed by the petitioners/defendants 2 to 4 to set aside the order dismissing the C.R.P. for default. As the said miscellaneous petition was ordered today restoring the CRP to the file, the matter is taken up for disposal on merits.

Heard Sri M. Durgaprasada Rao, learned counsel for the petitioners/defendants 2 to 4, and Sri V.S.R. Anjaneyulu, learned counsel for the first respondent/plaintiff.

The facts, as set out hereinbefore, demonstrate that the appeal before the learned V Additional District Judge, Guntur, was directed only against the order dated 20.09.2005, whereby the I.A. filed by the petitioners/defendants 2 to 4 under Order 9 Rule 13 CPC was dismissed for default. Imposition of costs as a condition precedent for setting aside the *ex parte* decree was not traceable to this order but was relatable to the earlier order passed by the trial Court on 02.08.2005. The said order was never subjected to challenge. Surprisingly, overlooking this crucial aspect, the petitioners/ defendants 2 to 4 raised grounds in the appeal filed by them only as to the imposition of costs. Had they been aggrieved by such imposition, they ought to have taken steps to assail the earlier order dated 02.08.2005, which they failed to do. The only issue that they could have raised in the context of the order dated 20.09.2005 passed by the trial Court was with regard to their failure to be present which led to the dismissal of the subject I.A. for default. Significantly, no ground was raised at all in this regard in the appeal.

Lack of due diligence on the part of the petitioners/defendants 2 to 4 is clearly manifest. Their appeal was wholly misconceived as it was not within the scope thereof to lay a challenge to the imposition of costs. That apart, even before this Court, it is not demonstrated as to how imposition of costs as a condition precedent for setting aside the *ex parte* decree was illegal or in excess of jurisdiction.

Reliance placed upon **N.KARUPPAN V/s. M.SANKARAN NAIR**^[1] by Sri M.Durgaprasada Rao, learned counsel, is of no avail as the Kerala High Court merely affirmed therein that Order 9 Rule 13 CPC not only empowered the Court to direct deposit of costs but also the decretal amount, in part or in full, before an *ex parte* decree is set aside. Exercise of discretion by the trial Court in this regard would necessarily depend upon the facts of the case. This judgment therefore does not help the petitioners/defendants 2 to 4.

On the above analysis, this Court finds no grounds to interfere with the orders passed by the Courts below. The Civil Revision Petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

26th FEBRUARY, 2016

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^[1] AIR 1973 KERALA 28