

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.4800 of 2013

Order:

The petitioner herein is the fourth defendant in OS No.22 of 2007 on the file of the Junior Civil Judge, Chevella, Ranga Reddy District. The said suit was filed by the first respondent herein seeking partition and separate possession of 1/4th share to her. In the said suit, she not only made her co-parceners as defendants to the suit, but also made the present petitioner and his brother Kesham Shankaraiah as defendants 4 and 5. The defendants 4 and 5 filed a written statement stating that their father late Kesham Chandraiah purchased the land bearing Survey No.128/EE to an extent of 0-37 gts., and Sy.No.130/EE to an extent of

0-34 gts., situated at Kummera village, Chevella Mandal, Ranga Reddy District, from the original owner, who is none other than the grand father of the plaintiff. They also stated that they sold away the said land to one Padala Ramchandraiah of Mudimyal village in the year 2005 through a registered sale deed, dated 23.09.2005, and now the said purchaser is in possession of the property. After filing of the written statement, the said purchaser was also made as defendant No.6 in the suit. He did not contest the case. The counsel, who was engaged by the defendants 4 and 5, did not cross-examine the plaintiff and they did not adduce any evidence. The defendants' evidence was closed. An *ex parte* preliminary decree was passed on 03.02.2011. After passing the *ex parte* preliminary decree, the petitioner herein filed IA No.362 of 2011 stating that, though, he and his brother engaged one advocate, they were not aware of the subsequent events and they came to know about the passing of preliminary decree, dated 03.02.2011, when they received notices in the enquiry for final decree. Hence, he filed an application to set aside the *ex parte* preliminary

decree, dated 03.02.2011, and as there is delay of 208 days in filing the said petition, he filed IA No.362 of 2011 to condone the said delay. A detailed counter affidavit was filed by the first respondent/plaintiff stating that the defendants 4 and 5 did not contest the case and, in fact, they sold the land to an extent of Ac.1-30 gts., in favour of one Padala Ramchandraiah, who was arrayed as defendant No.6, and he did not choose to contest the matter, thus, they have no interest in the land. It is also stated that, even after issuing notices to all the petitioners, they did not appear before the Court and, therefore, final decree petition was allowed. An application, under Order 22 Rule 4 of CPC, to bring the legal heirs and another petition, under Order 9 Rule 13 CPC, to set aside the decree in OS No.22 of 2007, was filed and those applications are in the section only. Defendant No.5 died on 05.04.2009.

2. The trial Court, taking the above facts into consideration, dismissed the application by holding that defendants 4 and 5 have sold away the property to defendant No.6, and defendant No.6 did not contest the matter. The present petition appears to have been filed only to stop the final decree proceedings. The lower Court further held that there was no proper explanation for the delay and, accordingly, dismissed IA No.362 of 2011, by the impugned order, dated 13.09.2013.

3. Apart from the order of the lower Court, I have independently examined the matter and I am satisfied that the defendants 4 and 5, who sold away the property purchased by their father to defendant No.6, did not evince any interest in prosecuting the case. The property purchased by the defendants 4 and 5 is only one item in the suit for partition and it is shown as item No.G. Admittedly, the present petitioner is not interested in any other item of the property. Defendant No.6, who purchased the property, did not contest the case. In the circumstances, I do not see any ground to interfere with the order

passed by the lower Court and the order of the lower Court does not warrant any interference.

4. The Civil Revision Petition is, accordingly, dismissed. However, in the circumstances, no costs.

5. As a sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

A.

RAMALINGESWARA RAO, J.

Date: 25.01.2016

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