

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.1642 of 2015

Date: 07-01-2016

Between:

Madala Narasimharao and another

.... Petitioner

AND

Mundluri Kiran Kumar and 5 others

.... Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.1642 of 2015

ORDER:

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The respondents 3 and 5 in I.A.No.364 of 2011 in O.S.No.114 of 1994 on the file of Additional Senior Civil Judge, Ongole, Prakasam District are the petitioners herein. They filed I.A.No.1710 of 2014 for receiving certain documents by condoning the delay and marking the same on behalf of the petitioners to prove their contentions. The said application was dismissed by the learned Additional Senior Civil Judge, Ongole on 19-02-2015.

The 1st respondent herein filed O.S.No.114 of 1994 on the file of Additional Senior Civil Judge, Ongole, seeking partition of A-schedule properties and allotment of three shares to him and one share to the 7th respondent. The said suit was decreed on 30-11-2005 for division of items 1 to 4 and 6 of A-schedule property into four equal shares and to allot three shares to the plaintiff and one share to the 7th defendant. Against the said judgment and decree,

the defendants 3 to 6 filed A.S.No.96 of 2006 on the file of I Additional District Judge, Ongole and the appeal was dismissed on 17-09-2010 confirming the judgment and decree of the trial Court. It appears that the second appeal was also dismissed confirming the judgment and decree of the trial Court. At that stage, I.A.No.1710 of 2014 was filed by the defendants 3 and 5 on the ground that the plaintiff and the 7th defendant played fraud and obtained preliminary decree. They stated that the documents which are sought to be produced proved their case. The trial Court dismissed the application observing as follows:

“.....The petitioners intend to file certified copies of the documents which were available to him from the date of initiation of proceedings under preliminary decree. There is no explanation from petitioner what prevented them to file the documents now intend to file the same in final decree petition before trial and agitate the same. Instead of doing so the petitioners want to prove the fraud played by the petitioners in final decree proceedings under the guise of principle laid down by the apex Court. With great respect to the principle laid down by the Apex Court, I am unable to adopt the principle laid down by the apex court to the present facts of the case. But principle laid down by the Hon'ble High Court of A.P. in decision second cited supra I find the court which passes final decree have no jurisdiction to go beyond the preliminary decree except to pass final decree in terms of preliminary decree and to work out equities. No whisper was made by the petitioners to explain the delay in filing those documents appended to the petition except contending that the respondents played fraud on the court while obtaining the preliminary decree. In the absence of any cogent explanation by the petitioners the delay in filing those documents cannot be condoned. As rightly pointed out by the counsel for respondents the documents sought to be filed by the petitioners in this petition which were filed in preliminary decree itself and suit was decided on merits and appeal was also dismissed by confirming the preliminary decree. In the above circumstances the petitioners are not entitled to condone the delay in filing the documents in receiving the same. I do not find any force in the contention of the petitioners much less merits in this petition. Therefore, I am

not inclined to allow this petition.....”

The affidavit does not disclose the nature of fraud alleged to have been played by the plaintiff and the 7th defendant. The defendants 3 to 6 filed first appeal and second appeal and they failed in their attempts. They got an opportunity to put forward their case. The preliminary decree was confirmed. At the stage of final decree proceedings, they wanted to file the documents in order to prove the alleged fraud without disclosing and making the averments relating to the fraud. The scope of final decree proceedings is limited to the preliminary decree and the preliminary decree was confirmed. The petitioners cannot enlarge the scope of final decree proceedings and challenge the preliminary decree.

In the circumstances, the order dated 19-02-2015 in I.A.No.1710 of 2014 in I.A.No.364 of 2011 in O.S.No.114 of 1994 does not warrant interference and the Civil Revision Petition is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. However, this order will not preclude the petitioners from pursuing their remedies if any according to law.

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

A. RAMALINGESWARA RAO, J

Date: 07-01-2016

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