

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.3297 of 2016

ORDER:

The Civil Revision Petition is filed by the petitioner under Article 227 of the Constitution of India against the order in I.A.No.1629 of 2010 in O.S.No.23 of 2009, dated 02.06.2016, on the file of the III Additional District Judge, Kakinada.

2. Heard and perused the material available on record.

3. O.S.No.23 of 2009 was filed by the respondent/plaintiff for specific performance of the oral agreement of Sale, dated 04.04.2003, to direct the petitioner/defendant to execute the regular sale deed and register the same in favour of the plaintiff, whereby the O.S.No.23 of 2009 was allowed vide order, dated 17.09.2009, wherein the petitioner/defendant was set *ex parte*.

4. I.A.No.1629 of 2010 in O.S.No.23 of 2009 was filed by the petitioner/defendant under Section 5 of the Limitation Act and Section 151 CPC to condone the delay of 204 days in filing the petition to set aside the *ex parte* decree, dated 17.09.2009, passed against her, whereby the learned III Additional District Judge, Kakinada, dismissed the application. Aggrieved by the same, the present civil revision petition is filed by the petitioner/defendant.

5. Learned counsel for the petitioner submitted that the petitioner is originally resident of Relangi Village, but later she shifted her residence to Vadlamudi, where her daughter is residing and she is also aged about 84 years and due to some communication gap, she could not be able to appear before the Court and defend the O.S.No.23 of 2009 filed by the respondents herein.

6. The learned counsel for the respondents submitted that the petitioner has not come with clean hands and knowing fully well that a suit is pending, she has transferred the property to her daughter as well as her grand daughter, which necessitated them to file another suit for cancellation of the said transfer of the properties concerned.

7. Having regard to the facts and circumstances of the case and taking into consideration the submissions of the learned counsel for the petitioner and the age of the petitioner, the Civil Revision Petition is allowed by setting aside the order, dated 02.06.2016, in I.A.No.1629 of 2010 in O.S.No.23 of 2009, passed by the III Additional District Judge, Kakinada, and the I.A.No.1629 of 2010 be restored and the III Additional District Judge, Kakinada, is directed to condone the delay of 204 days in filing the petition to set aside the *ex parte* order, dated 17.09.2009, passed in O.S.No.23 of 2009 and dispose of the O.S.No.23 of 2009 within a period of six (6) weeks from the date of receipt of a copy of this order. The petitioner is directed to co-operate with the trial Court for early disposal of O.S.No.23 of 2009 without seeking any further adjournment before the trial Court.

8. Accordingly, the Civil Revision Petition is allowed. Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

RAJA ELANGO, J

Date: 3rd August, 2016

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