

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 4080 OF 2016

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed by the petitioner/defendant No.16 assailing the dismissal order dated 09.06.2016 passed by the Senior Civil Judge, Kavali, in I.A.No.461 of 2016 in I.A.No.1 of 2016 in O.S.No.70 of 2007.

2. Petitioner is defendant No.16 in O.S.No.70 of 2007 on the file of Senior Civil Judge, Kavali. The said suit is filed by the respondents/plaintiffs seeking partition of the suit schedule property. Written statement is filed by the petitioner stating that she came to purchase the property from defendant Nos.1 to 16 through registered sale deeds dated 06.06.2006 and 07.06.2006 for a valuable consideration. The suit is at the stage of defendants' evidence and their evidence was closed on 24.11.2015 for non-appearance of the defendants. Hence, the petitioner/defendant No.16 filed I.A.No.1 of 2016 on 04.12.2015 seeking to reopen the suit and to allow the petitioner to adduce her side of evidence. Petitioner also filed I.A.No.141 of 2016 seeking amendment of the cause title in I.A.No.1 of 2016 wherein she pleaded that by over site and mistake she had failed to add respondents/defendant Nos.1 to 15. Both the said IAs were dismissed for default by the court of Senior Civil Judge, Kavali. Seeking restoration of I.A.No.1 of 2016, petitioner filed I.A.No.462 of 2016 and the same was dismissed considering the conduct of the petitioner in prosecuting I.A.No.141 of 2016 as well as I.A.No.1 of 2016 and holding

that in spite of repeated opportunities, neither the case was represented by her nor by anyone on her behalf.

3. Heard learned counsel for the petitioner. Sri V.Sudhakar Reddy, learned counsel for the respondents, by placing the certified copy of the docket proceedings in I.A.No.1 of 2016 as well as I.A.No.141 of 2016 submits that at no point of time petitioner was diligent in prosecuting the matter. Learned counsel would also point out that on various dates on behalf of the petitioner there was no representation and ample opportunity was given to the petitioner to prosecute the application filed by the petitioner. In spite of the fact that so many opportunities having been given, petitioner, having failed to avail the same, is only interested in dragging the proceedings in the suit and in the process, deprived of the just claims of the plaintiffs/respondent Nos.1 to 5.

4. Having considered the respective submissions and as can be seen from the docket proceedings placed before this court by respondent's counsel on number of occasions, there was no representation on behalf of the petitioner and the same cannot be disputed. In normal circumstances, on account of there being no diligence on behalf of the petitioner, the orders in I.A. dismissing to restore the application cannot be found fault. However, considering the fact that the suit is filed for partition of the suit schedule properties between the family members of the plaintiffs and defendant Nos.1 to 15 and the petitioner being only a third party but admittedly purchased the same through registered sale deeds for consideration of

Rs.1,00,000/- per acre even as per the plaintiff, the substantial rights of the petitioner, she may otherwise have, cannot be allowed to be defeated on account of the lapse of the advocates appearing on her behalf.

5. In those circumstances, the court below ought to have taken a pragmatic view and in stead of prolonging the case in filing I.A.No.141 of 2016 for correcting the mistake of cause title for over a period of more than 1½ month and on that ground keeping the I.A.No.1 of 2016 pending and thereafter dismissing the same for default cannot be justified. The IAs of this nature are required to be considered by the court keeping in view the substantial injury that may be caused to the parties and shall be required to be decided expeditiously as it is within the discretion of the court by considering the reasons stated in wherever necessary by imposing costs and putting the respective parties on terms. In the circumstances, the orders in I.A.No.142 of 2016 is set aside with a direction to the Court of the Senior Civil Judge, Kavali, to pass appropriate orders in I.A.No.1 of 2016 within a period of ten days from the date of receipt of a copy of the order and thereafter proceed to complete the suit proceedings itself within a period of six months.

The Civil Revision petition is allowed on payment of costs of Rs.10,000/- payable to respondent Nos.2 to 5 which shall be paid within ten days from the date of receipt of a copy of this order. As a sequel, the miscellaneous applications, if any, shall stand closed.

JUSTICE CHALLA KODANDA RAM

December 30, 2016

**Note:- Furnish copy by one week
{B/o} LMV**

