

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.3960 OF 2017

ORDER:

The petitioner is the plaintiff in O.S.No.28 of 2008 on the file of the I Additional Junior Civil Judge, at Ongole. The suit was filed for declaration of title and injunction in respect of the property of an extent of Acs.0.97 cents of land in Survey No.317/C situated in Doddavaram Village, Maddipadu Mandal, Prakasam District. The suit was originally filed against the first respondent herein and when she filed a Written Statement stating that the property was sold in favour of the second respondent, the second respondent was impleaded and the second respondent filed a separate Written Statement. After filing the separate Written Statement by the second respondent, the evidence was completed on behalf of the plaintiffs and the defendants, and at that stage, when the second respondent herein filed I.A.No.174 of 2014 to receive Additional Written Statement, the said application was allowed by the learned I Additional Junior Civil Judge, Ongole on 14.07.2017. The civil revision petition is filed challenging the said order.

I.A.No.174 of 2014 was filed stating that when the suit is posted for adducing evidence on behalf of the second respondent herein, it was noticed that the earlier Written Statement filed did not traverse all the allegations made in the plaint and in those circumstances, it was very much necessary to file an Additional Written Statement. A Counter Affidavit is filed on behalf of the petitioner/plaintiff stating that at that time, the defendants' further evidence cannot be permitted and what cannot be done directly, cannot be allowed to be done indirectly.

The second defendant originally filed Written Statement on 31.08.2009 merely denying only one averment with regard to delivery of possession of the property under Sale Deed dated 18.01.2008. Thereafter evidence was adduced. Now an Additional Written Statement is sought to be filed after five

years with several averments. The trial Court allowed the application with the following order.

"I have perused the entire material available on record. As the reason given by the petitioner is sufficient as they got knowledge only at the time of adducing the evidence on their behalf to file the Additional Written Statement, but not at the time of filing neat copy of the plaint. No party should be denied of proving his case. Considering the plea of the petitioner to give one more opportunity to him. Accordingly, this petition is allowed in the interest of justice."

When an Additional Written Statement is sought to be filed by a party after completion of evidence, whether the party is entitled to file Written Statement raising several contentions elaborately after five years, should have been examined by the trial Court. The trial Court allowed the application merely stating that the reasons given by the petitioner was sufficient. No plea was taken by the second defendant at any point of time with regard to non-availability of copy of the plaint and the observation made by the trial Court is general in nature. The trial Court should have taken the facts of the case into consideration and decide the application.

In the circumstances, this Court is constrained to set aside the impugned order dated 14.07.2017 by allowing the civil revision petition and remand the matter to the trial Court for consideration of the case afresh on the basis of the Affidavit and the Written Statements available on record and fix an early date for hearing the application and pass appropriate orders in accordance with law. It is made clear that any rejoinder filed by the petitioner herein would be subject to further orders to be passed by the trial Court.

The civil revision petition is accordingly allowed. Consequently, miscellaneous petitions, if any pending, in the civil revision petition shall stand closed.

A.RAMALINGESWARA RAO, J

27.10.2017
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