

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1704 of 2017

ORDER :

This Civil Revision Petition is filed challenging the order dt.08.03.2017 in I.A.No.125 of 2017 in O.S.No.145 of 2004 on the file of IV Additional District Judge, Tanuku.

2. The petitioners herein are defendant nos.9 to 11 in the said suit.
3. The said suit was filed in the year 1992 for cancellation of certain sale deeds in favour of the 2nd defendant and to alternatively declare that the plaintiff perfected title over the plaint 'A' & 'B' Schedule property by adverse possession, and to put the plaintiffs in possession of the 'A' schedule property after evicting the 1st respondent therefrom, etc.
4. It is not in dispute that subsequent to the filing of the suit, the 2nd defendant alienated the property to the petitioners on 20.07.2012, and they were impleaded on 16.10.2012 by the plaintiff, but they did not file any written statement. Ultimately, they were set *ex parte* on 18.04.2016.
5. On 02.02.2017, when the matter was posted for arguments, the petitioners filed an application to set aside the order setting them *ex parte* on the ground that petitioners had gone to Orissa to attend to agricultural operations, that the 1st petitioner became sick and other

petitioners also suffered from ill-health and did not instruct their Advocate to defend the suit.

6. Counter-affidavit is filed by 1st respondent/1st plaintiff opposing the said application and contending that the petitioners were *pendente lite* purchasers of plaint 'B' schedule property in 2012 from the 2nd respondent, and without participating in the trial they have been protracting the proceedings since 2012 even though they were represented by the Counsel without filing any written statement.

7. By order dt.08.03.2017, the Court below dismissed the said application holding that the petitioners were observing all the proceedings in the suit but did not participate in the said proceedings till the suit is posted for arguments. It also held that they were not acting with due diligence, and therefore, they cannot be permitted to participate in the proceedings.

8. Challenging the same, the present Civil Revision Petition is filed.

9. Though the counsel for petitioners sought to contend that the petitioners are *bona fide* purchasers and they ought to be given an opportunity to defend the suit by filing a written statement and lead evidence, I am not impressed by the said contention.

10. Firstly, the said suit is of the year 1992 and was filed as a pauper suit and got numbered in 2004. The petitioners were impleaded on 16.10.2012, but they did not choose to file a written

statement till 18.04.2016 when they were set *ex parte*. It is not disputed that they had engaged a counsel and no valid reason is assigned why they could not file a written statement for almost 3 ½ years.

11. It cannot be said that all the three petitioners were sick during the period prior to 18.04.2016 and were disabled from briefing their Advocate and getting written statement filed. That apart, it appears that they are simply observing the Court proceedings without participating therein till the suit is posted for arguments.

12. Their conduct, therefore, does not inspire any confidence more particularly when no medical certificate is filed to prove the illness of the petitioners on 18.04.2016.

13. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

14. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-07-2017

Ndr/*