

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.2654 of 2017

ORDER

The revision petitioner is the plaintiff in O.S.No.119 of 2005 filed against the revision respondent/defendant, for specific performance of a contract for sale pursuant to the so called agreement dt.29.05.1995. The suit filed is as referred supra 10 years later in 2005. It was an exparte decree obtained against the defendant. The wife and children of the defendant as three petitioners, by mentioning the whereabouts of the sole defendant are not known, filed application u/ sec.5 r/ w 14 of the Limitation Act in I.A.No.576 of 2010 along with another application to set aside the exparte-decree, dt. 12.10.2007. The application was filed on 25.03.2010 nearly 2½ years after the exparte decree by seeking to condone delay of the entire period. The affidavit petition reads their father disappeared way back in January, 2007 and his whereabouts not known and they are the legal heirs entitle to prosecute the main suit and to protect and safeguard their rights over the property and thereby the decree is to be set aside that was obtained behind their back without getting impleadment.

2. The counter filed by the plaintiff opposing I.A.No.576 of 2010 is that the petitioners have no locus standi to maintain the petition and the sole defendant appeared before the Court by engaging an Advocate later and the Advocate reported no instructions from which he was set exparte and decree was

ultimately passed recording the evidence of the plaintiff and thereby the revision is liable to be dismissed.

3. There is no application seeking leave to file the exparte decree set aside petition, leave about any maintainability of that leave even for not a third party appeal against the exparte decree by the wife and children of the defendant saying it was obtained behind their back, however it appears there is a suit filed by the wife and children of the defendant saying the exparte decree is obtained behind their back fraudulently and the suit in O.S.No.515 of 2007 is still pending undisputedly. In the meantime, the sole defendant appeared and he filed I.A.No.625 of 2012 for his impleadment by transposing him as petitioner to I.A.No.576 of 2010 by deleting his wife and children from the array of the petitioners to the prayer to set aside the exparte decree. It is that I.A.No.625 of 2012 was allowed on 07.04.2017 by the learned Prl.Senior Civil Judge, Kurnool, permitting the petitioner/defendant to be added as sole petitioner to I.A.No.576 of 2010 and delete the petitioners 1 to 3-wife and children of the defendant.

4. Impugning the same, the present revision is filed and there was interim stay of proceedings pursuant to the order in I.A.No.625 of 2012 passed by another Bench of this Court, dt.16.06.2017 which was extending from time to time, expired and it is at the stage for extension, the revision application itself is taken up for hearing.

5. Heard both sides and perused the material on record.

6. So far as the maintainability of the exparte decree set aside application other than by the defendant to the suit is concerned, that too without leave it is not sustainable. However during its pendency, the sole defendant to the exparte decree sought for impleadment in I.A.No.625 of 2012 in fact a necessary party for disposal of the petition and that impleadment is allowed not only for impleadment but also transpose him as a petitioner by deleting the names of his wife and children. The impleadment of a person against the will of the petitioners is different from transposing. The question of transposing in this application does not arise but for if at all the sole defendant to file an application to set aside the exparte decree explaining the period of delay in seeking to set aside the same that was not the recourse adopted to sustain I.A.No.576 of 2010. It is in that petition rather only impleading also permitting to transpose the impleaded petitioner A.Pamachandra Reddy as sole petitioner is also unsustainable. Thereby the revision is to be allowed by left open remedy of the petitioner i.e. defendant-Pamachandra Reddy, if at all to file a petition under Order 9 Rule 13 CPC, with a delay condonation petition afresh by explaining the delay for the period consumed after his filing impleadment petition in I.A.No.625 of 2012 all through u/ sec.14 of the Limitation Act as a bonafide prosecution in wrong recourse and forum by the application for the Court to decide on own merits after contest.

7. No doubt, the plaintiff, stated filed Execution Petition against the defendant's wife and children, is not entitled to execute against the persons who are not bound by the decree and if any such application is filed as respondents to that execution petition, they can file an application u/ sec.47CPC so that the decree is not executable against them.

8. With these observations, the revision is disposed of. Consequently, miscellaneous petitions, if any, pending in this revision shall stand closed.

Date:18.12.2017
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Dr. B. SIVA SANKARA RAO, J

