

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

C.M.A.No.928 of 2015

ORDER:

This appeal is filed under Order 43 Rule 1 read with section 104 CPC challenging the orders dated 21.03.2014 in I.A.No.104 of 2012 in O.S.No.1365 of 2009 on the file of the Principal Senior Civil Judge Court, Ranga Reddy District at L.B.Nagar.

Heard both sides.

A perusal of the record reveals that respondents 1 to 4 herein have filed O.S.No.1365 of 2009 on the file of the Court of Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar against the appellant and respondents 5 and 6 for partition of the suit schedule property and also for cancellation of the registered sale deed, bearing document No.4098 of 2007, dated 18.05.2007. For one reason or other, the appellant herein did not appear before the trial Court. Having no other alternative, the trial Court passed *ex parte* decree on 08.11.2010.

While things stood thus, the appellant filed I.A.No.104 of 2012 to set aside the *ex parte* decree dated 08.11.2010 passed by the trial Court. The respondents 1 to 4 herein have filed counter opposing the petition. A perusal of the record reveals that the appellant-petitioner did not advance arguments before the trial Court on 28.02.2014 and 12.03.2014. The trial Court having no other alternative dismissed the petition on 21.03.2014. As rightly pointed out by the learned counsel for respondents 1 to 4, there are some laches on the part of the appellant while prosecuting I.A.No.104 of 2012.

While deciding the applications of this nature, the approach of the Court shall be pragmatic and not pedantic. The only grievance of the appellant is that no opportunity was given to him to advance his argument. A perusal of the record clearly reveals that the trial Court passed the orders in I.A.No.104 of 2012 without hearing the appellant's counsel. Giving of one more opportunity to the appellant to put forth his submissions to substantiate his stand may not cause any prejudice to the respondents 1 to 4.

In view of the facts and circumstances of the case, I am of the considered view that it is a fit case to give one more opportunity to the appellant to put forth his case before the trial Court.

Having regard to the facts and circumstances of the case, the orders dated 21.03.2014 in I.A.No.104 of 2012 is set aside and the matter is remanded to the trial Court for fresh disposal after affording one more opportunity to the appellant. Consequently, I.A.No.104 of 2012 is restored to file. The trial Court is hereby directed to dispose of I.A.No.104 of 2012 as expeditiously as possible, preferably, within one month from the date of receipt of copy of this order.

With the above direction, C.M.A. is allowed. Miscellaneous Petitions pending, if any, shall stand closed.

2nd March 2017.
Rns

T. SUNIL CHOWDARY, J

