

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.6943 of 2017

ORDER:

This Revision is filed by the petitioner assailing the order dt.24-11-2017 in I.A.No.808 of 2017 in O.S.No.791 of 2009 of the Principal Senior Civil Judge, Tirupati.

2. Petitioner is 6th defendant in the above suit.
3. The 1st respondent herein filed the suit for partition of the plaint schedule properties.
4. Petitioner herein was not initially impleaded in the said suit, but he filed an application to implead himself as party in the suit on the ground that he has right, title and interest in one of the plaint schedule properties. He was allowed to come on record as 6th defendant in the suit. However, he did not file written statement even after he was impleaded as a party in the suit. When the suit was posted for filing written statement on his behalf on 04-12-2015, he did not file written statement by that date. Therefore he was set *ex parte*.
5. In July, 2017 he filed an application under Order IX Rule 7 C.P.C. to set aside the order dt.04-12-2015 setting him *ex parte*. In the said application, he stated that though the suit was posted for filing written statement on his behalf on 04-12-2015, he lost his livelihood, and was in critical condition financially; that he

was unable to at least provide food to his family members; so the order dt.04-12-2015 should be set aside.

6. Counter-affidavit was filed by 6th respondent herein opposing the said application. He stated that the suit is of the year 2009, that it is coming up for further evidence on his part, and petitioner having ample knowledge about pending litigation, kept quiet and filed this application with false allegations.

7. By order dt.24-11-2017, the Court below dismissed the said application. The Court below noted that petitioner has taken a stand that he has right, title and interest in an extent of Ac.1.40 cents of land in Sy.No.662/1A of Surrappakasam village, Renigunta Mandal, which is worth Rs.50,00,000/- and therefore he cannot plead poverty. It also noted that the suit is coming up for arguments, and at that stage allowing this petition would practically compel the Court to conduct *de novo* trial. It also noted that petitioner had earlier filed Interlocutory Application for impleadment stating that he and his brother owned Ac.2.70 cents of land, and therefore he cannot be said to be poor and even if he is poor, he can approach the Legal Services Authority for free legal aid.

8. Assailing the same, this Revision is filed.

9. Though learned counsel for petitioner sought to contend that valuable rights of the petitioner will be affected if the order of the court below is allowed to stand, and that the petitioner had genuine

reason for not filing written statement by 04-12-2015, I am of the opinion that the Court below was right in holding that when petitioner claimed to own Ac.2.70 cents along with his brother, and is also claiming interest in Ac.1.40 cents of valuable land, he cannot plead that he is poor.

10. I therefore see no reason to exercise jurisdiction under Article 227 of the Constitution of India to interfere with the impugned order.

11. Accordingly, the Civil Revision Petition fails and it is dismissed at the stage of admission. No costs.

12. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-12-2017
Vsv/*

