

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.657 of 2018

ORDER::

This civil revision petition is filed aggrieved by the order dated 28-11-2017 passed in IA No.420 of 2016 in OS No.85 of 2009 partly allowing the said IA filed under Section 151 CPC by the 1st defendant in the suit to receive the counter claim and written statement.

2. For convenience sake the parties hereinafter will be referred to as they are arrayed in the suit. The petitioners herein are defendants 2 to 4 in the suit. The 1st plaintiff and the 3rd defendant who are brother and sister, are the children of 1st defendant. 2nd defendant is the son-in-law of 1st defendant and husband of 3rd defendant and brother-in-law of 1st plaintiff. 4th defendant is the son of 2nd and 3rd defendants and grand son of 1st defendant *i.e.* daughter's son.

3. Facts stated are:-defendants 1 and 2 are the absolute owners of the suit property having purchased the same under registered sale deed document no.1090/1993, dated 13-04-1993. Defendants 1 and 2 for their necessities, offered to sell the suit property on 10-05-2000, the plaintiffs agreed to purchase the same for a consideration of Rs.2,05,000/- and in view of the close relationship,

the parties agreed for the same and the plaintiffs paid a sum of Rs.1,65,000/-towards part sale consideration on 12-05-2000 by depositing the amounts into the account being maintained by the 3rd defendant, who is sister of 1st plaintiff, daughter of 1st defendant and wife of 2nd defendant and mother of 4th defendant, as defendants 1 and 2 have no bank account. That the plaintiffs also deposited the remaining balance sale consideration in the account of 3rd defendant. That as the defendants trying to dispossess the plaintiffs, who are in possession of the suit property and also sought to sell the suit property to third parties, the plaintiffs filed the above suit for specific performance of the oral agreement sale dated 10-05-2000 with an alternative relief for refund of sale consideration etc.

4. When the suit was coming up for the evidence of PW1, the 1st defendant filed the present application IA No.420 of 2016 to permit her to file counter claim and written statement *i.e.* counter claim to cancel the settlement deed dated 27-04-2016 said to have been executed in favour of 4th defendant (grandson) as fraud was played on her by defendants 2 and 3 and to permit her to file written statement in the suit filed by the plaintiffs. In the affidavit filed in support of the petition, the 1st defendant stated that she never gave

any instructions to any advocate either to file any written statement or to file the memo adopting the written statement filed by the other defendants 2 to 4 and defendants 2 to 4 played fraud on her and filed the memo as if she adopted the written statement filed by other defendants 2 to 4.

5. The trial Court, by the impugned order while rejecting the case of the 1st defendant seeking the relief to cancel the settlement deed permitted her to file written statement by partly allowing the application. Hence, this revision petition by the defendants 2 to 4.

6. Sri VLNGK Murthy, learned senior counsel appearing for the petitioners-defendants 2 to 4 contended that the trial Court without conducting any enquiry and without there being any evidence adduced reached a conclusion that defendants 2 to 4 played fraud on the 1st defendant. It is also stated that even otherwise if the 1st defendant has not authorised defendants 2 to 4 to file written statement on her behalf also, she was supposed to file written statement within the statutory period of 90 days, which she failed to do so and on that count the impugned order is bad and liable to be set aside. On the other hand, learned counsel for the 1st defendant made submissions in support of the impugned order.

7. It is to be seen that written statement is filed in this case by defendants 2 to 4 including on behalf of the 1st defendant. Whether the 1st defendant in fact instructed the other defendants to file counter on her behalf also or not, when she specifically controverted that she has not authorised by way of this application, without conducting any enquiry and recording a finding on that issue, coming to an adverse conclusion against defendants 2 to 4 is fallacious. On this short ground alone the impugned order is liable to be set aside and it is accordingly set aside. The matter is remitted to the file of the trial Court for consideration afresh and to pass orders in accordance with law. It is open for the petitioners-defendants 2 to 4 to raise all the pleas as are available under law, including the plea of filling written statement by the 1st defendant within the statutory period of 90 days.

8. The civil revision petition is allowed to the extent indicated above. Miscellaneous petitions, if any pending shall stand closed.

No order as to costs.

A. RAJASHEKER REDDY, J

Dated: 07-02-2018
NRG

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