

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.4035 & 4037 of 2018

COMMON ORDER:

These 2 revisions are maintained under Article 227 of the Constitution of India impugning the docket orders dated 20.06.2018 passed by the learned I Additional Senior Civil Judge, Nellore, in IA.Nos.295 & 294 of 2018 in OS.No.29 of 2009. The respective docket orders in relation to receiving of the documents on behalf of the defendants and recall of DW.1 for further cross examination reads that the document in question to confirm the factum of pleadings in the written statement of this is unassignable land from prohibition of assignment for the same granted by D-Form patta in favour of the 1st defendant since died mother of the 2nd defendant/petitioner and the prohibitory orders lease renewal obtained is a necessary document to receive and to exhibit the same to recall DW.1. The impugned orders shows the suit is of the year 2009, the documents are to be filed with written statement and those not filed even at the time of adducing defendant's evidence and after completion of the evidence of both sides came up with the petition to receive document and recall DW.1 shows no diligence that too in the identified matter and thereby dismissed saying it is only to drag on and to delay the disposal of the suit.

In the revision notice sent to the respondent/plaintiff failed to attend having received proof of service filed is held

sufficient. Thereby heard learned counsel for the petitioner/2nd defendant and taken as heard the respondent/plaintiff and perused the impugned order and the grounds of revision attacking the correctness of the said order in question.

A perusal of the written statement of defendant No.1 since died speaks about the land in question is an assignment land and not alienable and it is allotted in D-Form patta in S.No.9 of Vedayapalem Village allotted to her and prohibited from registration covered by Section 22-A of the Registration Act also. The suit filed is for specific performance of the so called contract for sale. One of the considerations is whether the specific performance pursuant to the so called agreement of the prohibitory land from alienation can be enforced. Once it is the crucial document, the lower Court should have been received by recall of DW.1 instead of dismissal rather than imposing heavy costs at best to meet the ends of justice.

Having regard to the above, both the revisions are allowed to receive the document and by permitting the recall of DW.1 for further examination only in relation to the documents in question subject to costs of Rs.3,000/- payable to the Head Clerk of the lower Court to send to Government Orphanage in the District, within in one week from the date of receipt of this order. Any non-compliance ceases the force of

the order confirms the impugned orders of the lower Court without any further reference to this Court.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 05.09.2018
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