

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition Nos.4961 and 4970 of 2018

COMMON ORDER:

CRP Nos.4961 and 4970 of 2018 are filed by the petitioners/ defendants 1 and 2 aggrieved by the common order dt.08.08.2018 in I.A.Nos.1734 and 1735 of 2018 in O.S.No.155 of 2012 on the file of Principal District Judge, Prakasam at Ongole, whereby and whereunder the learned Judge dismissed the petitions filed by the petitioners/ defendants 1 and 2 seeking to reopen the matter and to recall PWs.1 to 3 and DWs.1 and 2 for cross-examination by the defendants 1 and 2.

2) Notice to 1st respondent/plaintiff could not be served as the notice returned with the endorsement “no such company in the address”. Thereupon this Court permitted the petitioners to take out notice on the learned counsel appearing for the 1st respondent/plaintiff before the Trial Court. Notice was sent accordingly on the counsel for 1st respondent but there is no representation and hence, heard learned counsel for petitioners Sri Chetluru Sreenivas.

3) The point for consideration is:

“Whether there are merits in the CRPs to allow?”

4) **POINT:** The submission of learned counsel for petitioners is that the petitioners have not disputed the agreement of sale dated 22.11.2018. However, their contention is that the plaintiff did not come forward to convert the schedule property into plots by spending the necessary

expenditure and thereby the defendants 1 and 2 could not make conversion of schedule property into plots. In spite of repeated demands made by the petitioners/defendants 1 and 2, plaintiff did not come forward to pay the necessary expenditure to secure the Panchayat and town planning approval. Plaintiff never came forward to pay the balance of sale consideration and therefore, it is evident that the plaintiff had no intention to get a regular sale deed in respect of the scheduled property. On the other hand, his real intention was to sell the property to third parties directly to get huge profits. Under those circumstances, the defendants sold away the schedule property for their necessities for a valuable consideration as the plaintiff failed to perform his part of contract. Learned counsel would submit that in view of the nature of the defence taken by them in the written statement, it is very much essential to cross-examine PWs.1 to 3 and DWs.1 and 2 to effectively establish their defence. However, the Trial Court without considering their request dismissed the applications. Hence an opportunity may be accorded to the petitioners/defendants 1 and 2 to cross-examine the aforesaid witnesses by allowing the CRPs.

5) In the light of above submission, this Court perused the copy of written statement filed by the 1st defendant before the Trial Court. As rightly submitted by learned counsel, the plea of defendants 1 and 2 is that they entered into an agreement of sale dated 22.11.2018 to sell the schedule property for consideration. They denied that in spite of the demands made by the plaintiff, they did not come forward to obtain the town planning approval with the expenditure of plaintiff. Their further plea is that the plaintiff in his turn has not come forward for converting the schedule

property into plots by spending the necessary expenditure. He did not perform his part of contract. His real intention was to sell the properties to third parties directly to get huge profits. With that intention in mind, the plaintiff did not come forward showing his readiness and willingness to perform his part of the contract. It is further pleaded that having waited for the plaintiff, the defendants sold away the schedule property for their necessities for a valuable consideration. It is seen that so far the petitioners/defendants have not cross-examined any of the witnesses i.e, PWs.1 to 3 and DWs.1 and 2. Thus, as rightly submitted by learned counsel for petitioners, if an opportunity is not accorded to the petitioners/defendants 1 and 2, it will be difficult for them to establish their defence plea since all the aforesaid witnesses are prime witnesses.

6) Accordingly, both the Civil Revision Petitions are allowed by setting aside the impugned orders and the Trial Court is directed to permit the petitioners/defendants 1 and 2 to cross-examine PWs.1 to 3 and DWs.1 and 2 on the condition of petitioners depositing costs of Rs.500/- with the District Legal Services Authority, Ongole, on or before 30.11.2018.

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

U. DURGA PRASAD RAO, J

Date: 19.11.2018.

Note: Issue C.C by tomorrow.

(b/o)

scs