

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.3306 of 2018

ORDER:

This Revision is filed challenging the order dt.28-07-2017 in I.A.No.214 of 2016 in I.A.No.529 of 2015 in O.S.No.4 of 2007 of the Senior Civil Judge, Jangaon.

2. Petitioner herein is 1st plaintiff in the suit.
3. He filed the said suit for partition and separate possession of “A” and “B” schedule properties.
4. Subsequently, there was a compromise recorded before the Lok Adalat at Jangaon on 23-11-2013 and a preliminary decree was passed giving half share each to the plaintiff Nos.1 to 6, 11, 12 and 1st defendant on one hand and plaintiff Nos.7 to 10 and 39th defendant on the other hand in “A” schedule property and claim of plaintiffs in respect of “B” schedule properties was dismissed.
5. Out of respondent Nos.1 to 10/defendant Nos.4 to 12, some people were present before the Lok Adalat. Thereafter a final decree was passed on 25-07-2015 in I.A.No.529 of 2015.
6. Respondent Nos.1 to 10 then filed I.A.No.214 of 2016 to set aside the final decree stating that they did not receive any notice in the final decree petition I.A.No.529 of 2015; in schedule ‘A’, Sy.No.832, in which they are interested, was struck off and there was no

preliminary decree in regard to the said land, but by playing fraud on the Court and on respondent Nos.1 to 10, final decree was obtained and the said final decree is not in conformity with the preliminary decree.

7. This application was allowed on 28-07-2017 holding that the record did not disclose that any notice was served on respondent Nos.1 to 10 before passing of the final decree and that the drafting of the final decree and its engrossing on stamp paper is not in terms of the preliminary decree.

8. Assailing the same, this Revision is filed by the 1st plaintiff/petitioner.

9. Learned counsel for petitioner contended that notices were served in the final decree petition in I.A.No.529 of 2015 on respondent Nos.1 to 10 also and the trial Court was not correct in stating that no notice was served on them in I.A.No.529 of 2015. But he has not placed a scrap of paper before this Court to show that any notice was served on respondent Nos.1 to 10 herein in the final decree petition I.A.No.529 of 2015.

10. Learned counsel for petitioners also denied that Sy.No.832 was not included in "A" schedule in the preliminary decree and contended that it was also part of "A" schedule and was part of the preliminary decree.

11. This is disputed by the learned counsel for respondent Nos.1 to 10. It is the contention of the learned counsel for respondent Nos.1 to 10 that respondent Nos.1 to 10 had purchased from the 1st defendant various extents in Sy.No.832 and equities required to be worked out in the final decree to ensure that respondent Nos.1 to 10 do not suffer and behind their back, final decree was obtained causing hardship to them.

12. Having regard to the apprehension expressed by the learned counsel for respondent Nos.1 to 10 and having regard to the finding recorded by the Court below that no notice had been served on respondent Nos.1 to 10 in this Court in I.A.No.529 of 2015 filed for passing of final decree, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of its power under Section 115 C.P.C.

13. Accordingly, the Civil Revision Petition fails and is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-04-2019
Vsv