

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.5014 of 2018

ORDER:

Heard Sri L.Harish, learned counsel for the petitioner and Sri Y.Ashok Raj, learned counsel for the respondent.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.04-01-2018 in I.A.No.1268 of 2015 in O.S.No.237 of 2014 of the Senior Civil Judge, Nalgonda.

3. Petitioner is the plaintiff in the suit. She filed the said suit against the respondent for cancellation of registered sale deed dt.07-05-2013 allegedly executed by the petitioner in favour of the respondent. When the respondent did not file Written Statement, the respondent was set *ex parte* decree and *ex parte* decree was passed on 04-08-2015.

4. On 02-09-2015, I.A.No.1268 of 2015 was filed by the respondent under Order 9 Rule 13 CPC to set aside the *ex parte* decree dt.04-08-2015. In the said application, she alleged that she had filed a criminal case against the son of the petitioner for an offence under Section 498-A IPC and it was pending; elders of the village intervened and advised her not to proceed with the case and settle the matter amicably; therefore, she expected the respondent to compromise the matter with her, but they dragged it on and then obtained *ex parte* decree on 04-08-2015. She contended that the petitioner cheated her, made her

believe that she entering into compromise with the respondent, but she appeared before the Court, gave evidence, and got suit decreed *ex parte* in her favour and in these circumstances *ex parte* decree should be set aside.

5. Counter affidavit was filed by the petitioner opposing the said application. The petitioner denied that there was any advise from elders to settle the matters amicably and that she had expressed her intention to enter into compromise. It was also alleged that the respondent had no *locus standi* to file I.A. since she had already sold away suit schedule property to another person on 01-09-2015 and that the purchaser had also filed O.S.No.141 of 2015 against the petitioner and others before the Junior Civil Judge, Devarakonda. It was also stated that the respondent had filed another suit O.S.No.394 of 2014 against the petitioner for perpetual injunction and the same is pending.

6. By order dt.04-01-2018, the Court below allowed the said I.A. subject to payment of costs of Rs.300/- to be paid by the respondent to the petitioner. After referring to the contentions of the parties, it observed that the suit was decreed *ex parte* on 04-08-2015 and the application to set aside the *ex parte* decree was filed on 02-09-2015 within 30 days; Written Statement was also filed by the respondent putting forth her contest; and it was a fit case to recall *ex parte* decree. It also observed that no document was marked to show that the respondent already sold away the suit schedule property to any third party and that

such third party filed a suit against the petitioner and in any event, these facts can be gone into during trial.

7. Assailing the same, this Civil Revision Petition is filed.

8. Learned counsel for the petitioner contended that the Court below ought not to have set aside the *ex parte* decree particularly when the respondent had already sold away the property and grave prejudice would be caused to the petitioner, if the impugned order is allowed to stand.

9. Learned counsel for the respondent supported the order passed by the Court below.

10. Admittedly, the petitioner is the mother-in-law of the respondent and there is a registered sale deed executed on 07-05-2013 by the petitioner in favour of the respondent; and the petitioner had filed O.S.No.237 of 2014 to set aside the said sale deed alleging that fraud was played on her and the sale deed was obtained instead of a gift deed. It is also not in dispute that a criminal case was filed by the respondent against the petitioner and her son under Section 498-A IPC. The respondent had also filed O.S.No.394 of 2014 against the petitioner for perpetual injunction.

11. It is the case of the respondent that there was intervention of the elders who suggested a compromise and after giving the respondent an impression that the matter would be compromised, the petitioner went

ahead with O.S.No.237 of 2014, gave evidence and obtained an *ex parte* decree and thus, played fraud on her.

12.Though this is disputed by the petitioner, the fact remains that the application to set aside the *ex parte* decree was filed within a period of 30 days and costs were imposed on the respondent as a condition for allowing the I.A.No.1268 of 2015.

13.I agree with the view of the Court below that it is a fit case to set aside *ex parte* decree having regard to the contentions of the parties and that any allegation that the respondent had alienated the suit schedule property can be gone into in the suit.

14.I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference of this Court under Article 227 of the Constitution of India.

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

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-02-2019
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