

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1868 OF 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioner/plaintiff No.1 aggrieved by the order, dated 09.04.2019, passed in I.A.No.244 of 2018 in O.S.No.89 of 2012 by the Principal Senior Civil Judge, Kothagudem, wherein the Court below has dismissed the subject Interlocutory Application filed by the revision petitioner/plaintiff No.1 and respondent Nos.2 and 3/plaintiff Nos.2 and 3 seeking to recall PW.1 for the purpose of marking of G.P.As., dated 09.08.2011 and 28.12.2011.

2. Heard learned counsel for the revision petitioner/plaintiff No.1 and perused the record.

3. No representation for respondent No.1/defendant, in spite of listing the matter under the caption 'for orders'.

4. In the course of submissions, it is brought to the notice of this Court that the subject Interlocutory Application was filed to recall PW.1 to mark the G.P.As., dated 09.08.2011 and 28.12.2011, and the Court below was pleased to dismiss the same by the impugned order, dated 09.04.2019, observing that at the stage of cross-examination of PW.1, the subject Interlocutory Application is filed and the same is not maintainable. It is also brought to the notice of this Court that I.A.No.449 of 2018, filed under Section 38 of the Indian Stamp

Act read with Section 151 C.P.C., seeking to impound the subject G.P.As., is still pending.

5. In the impugned order, the Court below observed that the revision petitioner/plaintiff No.1 and respondent Nos.2 and 3/plaintiff Nos.2 and 3 have not taken any steps to validate the G.P.As. till filing of the affidavit of examination-in-chief of PW.1. The Suit is at the stage of cross-examination of PW.1 and at that stage, the subject Interlocutory Application is filed and the same is not maintainable. Further, I.A.No.449 of 2018, which is filed seeking to impound the subject G.P.As., is filed belatedly i.e., after more than six years from the date of filing of the Suit.

6. Since the subject Suit is to declare that the Sale Deed, dated 11.02.2011, is not binding on the revision petitioner/plaintiff No.1 and respondent Nos.2 and 3/plaintiff Nos.2 and 3 and for recovery of possession of 3/4th share in the suit schedule property, the substantial /is with regard to the entitlement of the revision petitioner/plaintiff No.1 and respondent Nos.2 and 3/plaintiff Nos.2 and 3 in respect of the suit schedule property is required to be determined in the Suit. The cause title of the plaint, a copy of which is filed at page No.21 of the material papers filed in support of this Civil Revision Petition, indicates that respondent Nos.2 and 3/plaintiff Nos.2 and 3 are represented through their G.P.A. holder, who is none other than the revision petitioner/plaintiff No.1. The Court below ought to have taken objection with regard to payment of

requisite stamp duty that is payable on the subject G.P.As. at the earlier point of time itself, but it did not do so. The Court below, at this stage, ought not have taken an objection with regard to the subject G.P.As., which are unstamped. Any how, an application in I.A.No.449 of 2018, which is filed seeking to impound the subject G.P.As., is still pending. The substantial *lis* in the Suit is required to be adjudicated. By the subject G.P.As., the revision petitioner/plaintiff No.1 was given power to represent respondent Nos.2 and 3/plaintiff Nos.2 and 3. The revision petitioner/plaintiff No.1 ought to have been diligent in prosecuting the Suit, by impounding the subject G.P.As at the earlier point of time. Though the subject G.P.As. are not impounded at the earlier point of time, since the revision petitioner/plaintiff No.1 and respondent Nos.2 and 3/plaintiff Nos.2 and 3 have got joint interest in the subject matter of the Suit, the Suit is required to be adjudicated on merits. The revision petition is required to be allowed to pursue I.A.No.449 of 2018 and the Court below ought not have passed the impugned order till the date of determination of I.A.No.449 of 2018.

7. Under these circumstances, the Civil Revision Petition is allowed and the impugned order, dated 09.04.2019, passed in I.A.No.244 of 2018 in O.S.No.89 of 2012 by the Principal Senior Civil Judge, Kothagudem, is set aside. I.A.No.244 of 2018 is

restored to its file for disposal afresh, in accordance with law, along with I.A.No.449 of 2018, to reach to a just conclusion.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

February 03, 2020.
MD

