

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION No.574 of 2021

ORDER:

This Civil Revision Petition is filed against orders of the trial Court in I.A.No.4 of 2020 in O.S.No. 21 of 2018 dated 20.03.2020.

2. O.S.No.21 of 2018 is filed for Specific Performance of contract and Agreement of Sale dated 04.08.2015 in respect of the suit schedule lands totally measuring an extent of Acs.10 – 13 gts, situated at Kagazmaddur village, Narsapur Mandal, Medak District. The said suit was decreed in favour of the plaintiff and defendants are directed to execute registered sale deed within two months from the date of judgment i.e, on 28.02.2019. The defendants in the suit filed an application before the trial Court to set aside the ex-parte order dated 28.02.2019. They mainly contended that address of the registered sale deed is not shown in plaint and in the E.P proceedings and wrong address is mentioned and got endorsement as refused. As such, requested the Court to set aside the ex-parte decree. The trial Court considering the arguments, allowed the application by setting aside the ex-parte

decree. Aggrieved by the said order, this Civil Revision Petition is preferred.

3. The revision petitioner stated that O.S.No.21 of 2018 was decreed in his favour on 28.02.2019. Whereas, respondents have filed I.A.No.46 of 2020 to set aside the ex-parte decree without filing any independent application to condone the delay by explaining reasons, as such the present application is not maintainable. The respondents did not adduce any evidence in support of their reasons. They simply stated that, they came to know about the decree on 01.11.2019. As per revenue records, suit schedule property was an agricultural land and the residential address reflects about the present stay of the parties and refusal of summons in the absence of rebuttal evidence nor examining any official to set aside the ex-parte decree is not sustainable. Cheque bounce case was also filed against the respondent No.2, regarding certain money transactions. As such, the argument of the respondents that they came to know about the suit on the particular day and filed application within 30 days is not tenable and thus requested the Court to set aside the order of the trial Court dated 10.03.2020.

4. The address of one Bobba Padmasri was shown in the sale deed as “Resident of Pragathi Enclave, Bhagyanagar Colony, Kukatpally, Hyderabad, Telangana State, Aadhaar No.3519 9633 6922, PAN No.AFKPB6803M”. But, in the suit, address is shown as “Resident of Flat No.104, Sri Sai Raghaavendra Pinacle, Kura Residency, Street No.4, Ashok Nagar, Hyderabad”. Address mentioned in the suit is also mentioned in the E.P proceedings. In the judgment, it is specifically mentioned that defendant Nos.1 and 2 were served with notice, but they did not appear before the Court. As such, they were set ex-parte. In E.P proceedings, Process Server mentioned that notices were refused. The revision petitioner stated that he filed E.P.No.60 of 2019 in pursuance of the orders of the suit and registered sale deed executed in his favour on 09.08.2019.

5. I.A.No.46 of 2020 was filed by Bobba Sri Rama Lingeshwara Rao as the second petitioner, who is the defendant No.2 in the suit stated that he was staying in the U.S.A of California since 2000 on job, he used to come to India now and then. The petitioner No.1 is his mother and she was staying in Kukatpally. His father was died in the year 2005 leaving

himself, three sisters and his mother. His three sisters were also staying in the U.S.A along with their family members. His mother used to visit the U.S.A as well as India frequently. The respondent was working in a mechanic shed of his brother-in-law at Kukatpally. He requested the respondent/plaintiff to look after the welfare of his mother and to assist her as and when needed. When he returned to India on 01.11.2019, he came to know that his mother handed over the original sale deed of the suit schedule property, pass book and title deeds to respondent/plaintiff and obtained encumbrance certificate. He came to know that the respondent/plaintiff created agreement of sale without their consent and also executed sale deed on 09.08.2019. He further stated that agreement of sale is not a registered document under Section 17 of the Registration Act. Even then, it is marked as Ex.A1 against the provisions of Registration Act. He mostly contended that the respondent/plaintiff furnished wrong address and obtained ex-parte decree and thus requests the Court to set aside the ex-parte order dated 28.02.2019.

6. In the counter – affidavit filed by the respondent/plaintiff in I.A.No.46 of 2020, stated that defendants filed application

under Order 9 Rule 13 C.P.C to set aside the ex-parte order. When the notices were sent to the defendants in O.S.No.21 of 2018, they were returned with an endorsement "Refused". The Court executed a sale deed in his favour and also handed over the possession. Therefore, requested the Court to dismiss the application.

7. The counsel for the revision petitioner stated that there was another case between them in C.C.No.771 of 2021, as such both of them are in touch with each other. Therefore, the argument of the respondents herein that summons were not served on them cannot be accepted.

8. The trial Court considering the arguments of both sides, observed that admittedly wrong address was shown by the petitioner Nos.1 and 2 herein. Their address is different in the suit and in E.P when compared with the address mentioned in registered sale deed. The petitioners herein when came to know about the fraud played upon by the respondent/plaintiff filed an application. As the limitation starts from the date of knowledge, they need not file another application for condonation of delay and thus allowed the application by setting aside the ex-parte decree. The trial Court considering the arguments of both sides

rightly allowed the application by setting aside the ex-parte order and it needs no interference.

9. In the result, Civil Revision Petition is dismissed confirming the order under challenge.

10. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATED:20.10.2022

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