

**HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY**

**C.R.P.No.2885 of 2022**

**ORDER :**

This Civil Revision Petition is filed against the order dated 30.08.2022 in C.M.A.No.8 of 2019, on the file of Principal District Judge, Jagtial which arose out of the order in I.A.No.339 of 2014 in O.S.No.4 of 2014 dated 11.07.2019 on the file of Senior Civil Judge, Jagtial. The revision petitioners are the plaintiffs in O.S.No.4 of 2014.

2. For the sake of convenience, the parties herein are referred to as arrayed before the Court below.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

4. Initially, the suit was filed by the plaintiffs for declaration of title and perpetual injunction restraining the defendant and her agents etc., from interfering with the peaceful possession and enjoyment of the suit schedule property admeasuring Ac.7-34 gts in Sy.No.801 situated at Namillikonda Revenue Village of

Kodimial Mandal, Karimangar District and also to declare the registered sale deed bearing document No.1469 of 2013 dated 29.03.2013 on the file of Sub-Registrar, Mallial, Karimnagar District as null and void and not binding against the plaintiffs.

5. The plaintiff Nos.1 and 2 are the son and mother respectively. In nutshell, the averments in the plaint are that the father of the 1<sup>st</sup> plaintiff and husband of the 2<sup>nd</sup> plaintiff by name Kallepu Raji Reddy died intestate on 26.03.2010 leaving behind the plaintiffs as his legal heirs who was holding a joint family agricultural land to an extent of Ac.8-13 gts, in Sy.No.801, situated at Namillikonda Revenue Village of Kodimial Mandal, Karimangar District and thus the plaintiffs have share over the said property. It is the specific averment in the plaint that a group of unsocial elements with an intention to grab the suit schedule property created agreement of sale-cum-GPA without payment of sale consideration in the name of Kallepu Raji Reddy on 23.03.2007 and basing on it, the possession was handed over to the GPA holder. But, it is the case of the plaintiffs that they are in possession of the property and cultivating the same, even after the

death of Kallepu Raji Reddy they have also raised green gram crop. It is the further case of the plaintiffs that after the death of K.Raji Reddy, the GPA-cum-Agreement of Sale has expired and without the knowledge of the plaintiffs, the GPA holder has executed registered sale deed on 29.03.2013 in favour of the defendant, which is not valid in the eye of law and therefore, filed a suit for cancellation of said sale deed and also sought for relief of declaration of title as well as the possession of the property.

6. The record reveals that the respondents were set ex-parte as they refused to receive summons of the Court and the trial Court has examined the 1<sup>st</sup> plaintiff as P.W.1 and got marked Exs.A-1 to A-17. Considering the evidence of P.W.1, the trial Court has decreed the suit with costs declaring the plaintiffs as owners and possessors of the suit schedule property and also declared registered sale deed of the defendant bearing document No.1469 of 2013 dated 29.03.2013 as null and void and not binding on the plaintiffs.

7. Being aggrieved by the judgment and decree in O.S.No.4 of 2014 dated 22.04.2014, on the file of Senior Civil Judge, Jagtial,

the defendant has preferred CMA.No.8 of 2019 along with two interlocutory applications i.e., I.A.No.338 of 2014 and I.A.No.339 of 2014 to condone the delay of 24 days in filing the petition and to set aside the exparte decree dated 22.04.2014 respectively. It is the specific contention of the defendant before the appellate Court i.e., Principal District Judge, Jagtial that no summons were served on her and that process server did not come to her house and she did not refuse to receive summons. It is the contention of the defendant that she only came to know about the ex-parte decree dated 22.04.2014 when her supervisor informed that the plaintiff No.1 has approached to the suit schedule property and served copy of the ex-parte decree dated 22.04.2014 and on that she immediately approached her counsel and advised him to file a petition to set aside the ex-parte decree. But due to summer vacation, her counsel could not file the petition and that there was a delay of 24 days. The record reveals that the Principle District Judge, Jagtial has allowed I.A.No.338 of 2014 and condoned the delay of 24 days in filing the petition and dismissed I.A.No.339 of

2014 seeking to set aside the ex-parte decree. Being aggrieved by the same, the present Criminal Revision Petition is filed.

8. It is the contention of the revision petitioners that they had fair chance in succeeding the suit and the registered sale deed executed by the father of plaintiff No.1 in favour of the defendant cannot be set aside, without the evidence of the defendant under the guise of defendant being ex-parte. The trial Court ought not have dismissed the petition filed under Order IX Rule 13 of CPC as petition under Section 5 of Limitation Act was allowed and therefore prayed to set aside the orders of the Principal District Court, in CMA.No.8 of 2019.

9. On the other hand, learned counsel for the respondent contend that the registered sale deed is *void ab initio* as it has been executed subsequent to the death of father of plaintiff No.1 and as the GPA document comes to an end, the question of GPA further selling the property in favour of the defendant does not arise.

10. On perusal of the entire material on record and also the rival contentions, it is evident that the the defendant was set ex-parte by

the Senior Civil Judge Court, Jagitial (trial Court) with a specific contention that the defendant has refused to take notice. The judgment of the trial Court disclose that “the defendant remains ex-parte since she refused to receive summons sent by the Court”. After coming to know about the judgment and decree, the defendant herein filed I.A.No.338 of 2014 and I.A.No.339 of 2014 to condone the delay of 24 days as well as to set aside the ex-parte decree wherein the trial Court has allowed the I.A.No.338 of 2014 condoning the delay of 24 days but dismissed I.A.No.339 of 2014 filed under Order IX Rule 13 for setting aside the ex-parte decree. Being aggrieved by the same, CMA has been filed before the Principal District Judge.

11. On perusal of the orders in I.A.No.338 of 2014 dated 11.07.2019 on the file of Senior Civil Judge, Jagitial, it is evident that the defendant has taken a plea that the plaintiffs managed the process server of the Court, who filed a false report that the defendant refused to receive summons. The Court record discloses that the summons were issued to the defendant on her address and the process server of the District Court reported on oath that on

07.02.2014 when he went to the given address, the petitioner was present in her house, but she has refused to receive the summons, hence he affixed copy of the order on the door but no one came forward to make signature as witness. Basing on the said report, the Court held service of summons sufficient and the defendant was set ex-parte on 03.03.2014 and thereafter ex-parte judgment and decree was passed against the defendant on 22.04.2014. It is the specific contention of the defendant that process server was managed by the plaintiffs and plaintiffs did not prefer to get the process server summoned or examined to prove the truth in her allegations.

12. Admittedly, defendant was set ex-parte before the trial Court, as she refused to receive the summons but contrary to that it is the specific plea of the defendant that she never refused to take summons and the delay caused in filing the petition is only 24 days. The trial Court having condoned the delay of 24 days has dismissed the set aside petition. It is a matter of fact to be decided on merits, in order to determine rights of both the parties conclusively. The trial Court has given a finding that “As per the

2<sup>nd</sup> proviso of Order IX Rule 13, no Court shall set aside the decree ex-parte merely on the ground that there has been irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiffs' claims. In the instant case, the defendant has deliberately refused to receive the summons sent to her and therefore she is not entitled to get the ex-parte decree set aside. The finding of the trial Court is not at all tenable. Once it is the contention of the defendant that she has not received any summons, the trial Court ought to have recorded the statement of process server as allegations are leveled against the officer of the Court. There is no evidence on record to prove that the process server appeared before the Court and an oath deposed before the Court that the defendant refused to receive summons, though the said fact formed part and parcel of the said judgment.

13. In the absence of such record, this Court is of the opinion that the trial Court ought to have set aside the ex-parte judgment and decree by giving opportunity to both the parties to adduce evidence and the trial Court ought to have decided the case on

merits by considering the death certificate of the father of plaintiff No.1 and GPA executed by the plaintiffs in favour of the attorney holder and also considering the sale deed which has been registered subsequent to the death of the father of the plaintiff No.1 in order to put an end to the litigation.

14. In view of the above observations, this Court is of the opinion that orders in CMA.No.8 of 2019 dated 30.08.2022 on the file of Principle District Judge, Jagtial are to be set aside and consequently, the orders of the trial Court in I.A.No.339 of 2014 dated 11.07.2017 on the file of Senior Civil Judge, Jagtial are liable to be set aside. Accordingly, I.A.No.339 of 2014 on the file of Senior Civil Judge, Jagtial is hereby allowed. Further, both the parties shall maintain status quo orders till passing of final orders and as the suit is of the year, 2014, the trial Court shall record the evidence of both the parties and shall dispose of the suit within 6 months from the date of receipt of a copy of this order.

15. In the result, this Civil Revision Petition is allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

---

**G.ANUPAMA CHAKRAVARTHY, J**

Date: 27.02.2023  
dv