

THE HON'BLE SMT JUSTICE K. SUJANA

CIVIL REVISION PETITION NOS.52 AND 162 OF 2021

COMMON ORDER :

C.R.P.No.162 of 2021 is filed aggrieved by the order dated 14.12.2020 passed in I.A.No.462 of 2020 in I.A.No.147 of 2020 in O.S.No.144 of 2018 and C.R.P.No.52 of 2021 is filed aggrieved by the order dated 17.12.2020 in I.A.No.508 of 2020 in O.S.No.144 of 2018.

2. I.A.No.462 of 2020 was filed by the petitioners/defendants under Section 114 r/w.Order 47 Rule 1 of Code of Civil Procedure (for short 'CPC') praying the Court to review its previous order passed in I.A.No.147 of 2020.

3. The contention of the petitioners therein is that petitioner No.1-Chinna Mallaiah, himself and on behalf of his legal heirs filed I.A.No.147 of 2020 when he was alive, hence the contents in the affidavit does not require any changes, the same will be continued by the legal representatives of deceased petitioner No.1, and prayed the Court to allow the petition by setting aside the order passed in I.A.No.147 of 2020.

4. The respondent therein contended that the review petition is maintainable only when there is an error on the face of the record. Therefore, the said petition is not maintainable and prayed to dismiss the same.

5. C.R.P.No.52 of 2021 is filed by the revision petitioner/plaintiff aggrieved by the order in I.A.No.508 of 2020 in O.S.No.144 of 2018. I.A.No.508 of 2020 was allowed by the trial Court without giving opportunity to the revision petitioner. It is contended by the respondents that O.S.No.144 of 2018 was filed by the plaintiff for declaration and cancellation of registered sale deed bearing document No.2693 of 2009 dated 19.08.2009. The suit was posted on 19.12.2018 for appearance of the petitioners. Petitioners 2 and 3 therein received summons, but failed to appear before the Court, as such, the Court below passed ex parte order on 27.02.2019. The petitioners explained the reasons for their non appearance before the Court that petitioner No.1 was aged about 87 years and suffering with paralysis and subconscious memory and that on the date of appearance in the Court, he was admitted in hospital due to serious illness and treatment continued for three months and thereafter he was bedridden for long time. As such, he could not attend the Court and petitioners 2 and 3 also could not attend the Court due to the illness of

petitioner No.1. Hence, prayed the Court to set aside the ex parte order dated 27.02.2019 and to permit to contest the suit.

6. After hearing both the parties, the Court below allowed I.A.No.462 of 2020 and in view of orders passed in I.A.No.462 of 2020, I.A.No.508 of 2020 was also allowed setting aside the ex parte order.

7. Heard Sri Bajrang Singh Thakur, learned counsel for the revision petitioner and Sri N. Praveen Reddy, learned counsel for the respondents.

8. Aggrieved by the above orders, these revisions are filed stating that the Court below failed to see that respondents herein filed I.A.No.147 of 2020 for condoning the delay in filing the petition to set aside the ex parte decree in O.S.No.144 of 2018 and after filing counter affidavit, it was dismissed on technical grounds by the Court below through docket order dated 27.11.2020 observing that it was deposed by a dead person, hence, the petition is not maintainable. As the condone delay petition is dismissed, the un-numbered petition filed to set aside the ex parte decree is also to be dismissed resulting in confirmation of the decree passed by the Court. The Court below is right in

numbering the petition to set aside the ex parte decree which will be deemed to be rejected/dismitted and without challenging the said order of rejection, by filing review petition the Court below numbered it as I.A.No.508 of 2020. The Court below even allowed the set aside petition itself, without giving opportunity to the plaintiff in the delay condone petition and allowing the same is not in accordance with law. As such, he prayed the Court to set aside the order of the Court below.

9. As seen from the record, the respondents herein who are petitioners before the Court below contended that only on the ground of technical aspects, the petition was rejected and prayed the Court to review the same. The Court below while reviewing the same, observed that it was rejected under misconception of the Court, as such, registered the same, whereas no opportunity was given to the petitioner herein to contest I.A.No.508 of 2020 in O.S.No.144 of 2018. Hence, the orders impugned are liable to be remanded to the Court below for giving opportunity to the revision petitioner herein to contest the same.

10. Accordingly, C.R.P.No.52 of 2021 is allowed and the matter is remanded to the Court below. The Court below is directed to hear the revision Petitioner who is the respondent in I.A.No.508 of

2020 in O.S.No.144 of 2018 and pass orders in accordance with law.

11. C.R.P.No.162 of 2021 is dismissed as there is no illegality in the order passed by the Court below in I.A.No.462 of 2020 in I.A.No.147 of 2020 in O.S.No.144 of 2018. There shall be no order as to costs.

Miscellaneous applications, if any, pending shall stand closed.

Date : 03.04.2024
Rds

K. SUJANA, J