
(2011) 12 AP CK 0125

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 926 of 2009

N. Bayyapu Reddy and 3 others

APPELLANT

Vs

M. Surya Prakash and 5 others

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7

Citation : (2012) 1 ALT 417

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : B. Chandrasen Reddy, for the Appellant; C.B. Ram Mohan Reddy, for the Respondent

Judgement

Hon"ble Ms. Justice G. Rohini

1. The revision petitioners are the defendants 14 to 17 in O.S.No.99 of 2002 on the file of the Court of the III-Addl. District & Sessions Judge (FTC), R.R. District at L.B. Nagar.

2. The respondents 1 to 10 herein are the plaintiffs, whereas the respondents 11 to 24 herein are the other defendants to the suit.

3. The suit was filed for partition and separate possession of the plaintiffs' share in the suit schedule properties. Admittedly the suit summons were served and appearance was entered on behalf of the revision petitioners/defendants 14 to 17, However they failed to file their written statements. Hence the defendants 14 & 17 were set ex parte on 6.3.2003, the defendant No.15 was set ex parte on 25.6.2003 and the defendant No.16 was set ex parte on 24.10.2003.

4. Long thereafter, on 19.9.2008 they filed I.A.No.330 of 2008 under Order 9 Rule 7 of C.P.C. to set aside the ex parte orders dated 6.3.2003, 25.6.2003 and 24.10.2003 and permit them to file written statement and lead evidence on their behalf. The said application was dismissed by the Court below by order dated 5.12.2008 and aggrieved by the same the present Civil Revision Petition is filed.

5. I have heard the learned Counsel for both the parties and perused the material available on record.

6. In the affidavit filed in support of I.A.No.330 of 2008 it was pleaded by the revision petitioners/defendants 14 to 17 that they were under the impression that the respondent No.23 who is closely related to them assured that he would look after the matter, however subsequently due to the disputes they were not in talking terms and consequently there was no communication between them. While pleading that they came to know about the ex parte order only on 11.09.2008 through the counsel appearing for the respondent No.23, it was prayed to set aside the ex parte orders.

7. The Court below dismissed the application observing that there were no bona fides on the part of the petitioners and the application was filed at a belated stage only to protract the litigation.

8. It is not disputed before this Court that the evidence of the plaintiff is already closed. If the revision petitioners are permitted to file their written statement at this stage and relegated to the stage at which they were set ex parte, it would undoubtedly cause prejudice to the plaintiffs.

9. Having regard to the facts and circumstances of the case and on a careful consideration of the material available on record, I do not find any justifiable reason to interfere with the findings recorded by the Court below that no good cause could be shown by the petitioners for their previous non-appearance and that the application filed at a belated stage was not bona fide.

10. However as held in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, and Arjun Singh Vs. Mohindra Kumar and Others, the petitioners cannot be stopped from participating in the proceedings from the stage at which they put in appearance.

11. Accordingly, the revision petitioners are hereby granted liberty to participate in the proceedings from the stage at which the suit stands as on today. It is made clear that the written statement of the revision petitioners cannot be received and the witnesses already examined cannot be recalled for further cross-examination on behalf of the revision petitioners.

12. The order under Revision shall stand modified to the extent indicated above. Civil Revision Petition is accordingly disposed of.

13. No costs.