

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.1127 of 2015

ORDER:

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

2. The petitioners herein are defendants in O.S.No.103 of 2010 on the file of the Court of I Additional Chief Judge, City Civil Court at Secunderabad (for short, trial Court). The respondents herein filed the said suit for partition. The petitioners engaged an Advocate after receipt of the suit summons and thereafter remained *ex parte*. Ultimately, an *ex parte* preliminary decree was passed on 13.04.2011. Thereafter, the petitioners herein, on 30.06.2014, filed I.A.No.2639 of 2014 seeking condonation of delay of 1173 days in filing a petition to set aside the said *ex parte* decree with the following averments.

“3. It is respectfully submits that after receiving of the summons in my civil suit I have engaged an advocate, he filed a vakalt on behalf of me and petitioner No.2/Defendant No.2. Thereafter, I was stroked an arthatis (slip disk pain) disease I was admitted Hospital in long time. My sister is a pardanashin lady, so she did not know the advocate name and cell number of an advocate. I came to know that the suit is decreed. Respondents/Plaintiffs falsely claiming suit schedule property is our father property.

4. It is respectfully submits that on 16-6-2014 I have received a notice from the advocate Commissioner stating that this Hon'ble Court passed a decree and judgment in O.S.No.103 of 2010 as per decree she is going to allot a share to the plaintiffs and defendants.

5. It is further submits that we want to file a Written Statement against the suit, they made an allegation against me and my sister in their plaint. If the set aside petition is not allowed I will be put to irreparable loss.”

3. The said application was opposed by the respondents herein. The trial Court,

after considering the rival pleadings, dismissed the said application, by its order dated 13.10.2014, by observing that the said application was filed only to delay the proceedings of the final decree. The trial Court also stated that no medical record was produced in support of the plea of the petitioners. The order of the trial Court reads as follows:

“7. Upon the scrutiny of the rival contentions of both sides, it is an undisputed fact that after service of summons in the suit, the present petitioners engaged their advocate. But later they stood exparte and suffered the exparte decree. They did not take any stand in the original suit proceedings that the suit schedule property is not common ancestors property originally belonged to their father. For the first time in the affidavit in support of the present petition the contention of the respondents/plaintiffs that the suit schedule property belonged to their common father is denied. Such denial is also very much bald in nature without further details, who is actually the owner of the suit schedule property if their father is not the owner of the same. On the other hand, as seen from the material on record, Ex.A1 the registered sale deed vide doc.No.2391/78 dated 30.8.77 marked by the respondents/plaintiffs in the suit very much discloses that the suit schedule property belonged to the deceased father of the petitioners as well as the respondents in this case and there is no sanctity in the version of petitioners denying such fact. Thus, the surrounding facts and circumstances of the case and the false plea taken by the petitioners for the first time in the affidavit in support of the petition are very much disclosing that the present petition is engineered deliberately to delay the proceedings of the final decree. Further, in respect of the alleged illness of the first petitioner, there is no medical record produced corroborating the version of the petitioners. Even though the 2nd petitioner is pardanashin lady she would have sent instructions to the Advocate through some of her family members to represent the case of herself and first petitioner in the suit. For such omissions there is no justifiable and acceptable explanation from the petitioners side. The longer period of delay of 1173 days without any justifiable and valid reasons explained by the petitioner cannot be condoned by taking a lenient view, more so, when there is no prima facie case in the contention of the petitioners to defend the suit claim of the plaintiffs. The petitioners utterly failed to explain the day-to-day reasons for delay of 1173 days in filing the accompany affidavit in setting aside the preliminary decree in the suit.”

4. In the facts and circumstances of the case, the order of the trial Court dated 13.10.2014 in I.A.No.2639 of 2014 in O.S.No.103 of 2010 is justified and the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 04.12.2015

TJMR