

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

C.R.P.No.2592 of 2012

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ORDER:

This Revision is preferred against the order of dismissal of Interlocutory Application No.333 of 2011 moved in A.S.No.13 of 2008.

The petitioner is the appellant. He filed a Suit seeking partition of the suit schedule properties on the premise that he was the natural son of the 1st respondent. Since the 1st respondent died, his legal representatives are brought on record as the other respondents. Against the dismissal of the Suit, A.S.No.13 of 2008 was preferred with a considerable amount of delay of more than 400 days, but the same has been condoned. The Appeal was listed for arguments several times. Costs were also imposed when adjournments were sought for, but however, on 26-10-2010, when the matter was posted, both sides have reported 'not ready'. Hence, the matter was posted to 18-11-2010. Since the learned counsel for the appellant was not present in the Court and he did not also make any representation on behalf of the appellant, the Appeal was dismissed on 18-11-2010 by the learned II Additional District Judge, Amalapuram. However, I.A.No.333 of 2011 has been filed on 15-12-2011 pointing out that by inadvertence and by mistake, the next date of hearing was wrongly noted as 13-12-2010 instead of 18-11-2010 and that was the reason why on 18-11-2010, the appellant could not attend the Court nor was there any representation on his behalf. He therefore, prayed the order of dismissal of the Appeal on 18-11-2010 be set aside. That Application was opposed by the respondents. Hence, on 17-02-2012, the Court has dismissed the said Interlocutory Application.

Nearly after four months, the present Revision was preferred on 15-06-2012. All through, the petitioner herein has not been demonstrating any urgency for pursuing his right. He is very lax.

However, I consider it appropriate to provide him one final opportunity to pursue his Appeal, though Sri P. Rajesh Babu, learned counsel for the respondents has opposed the same on the ground that the petitioner has no *bona fides* in this

Application and he is merely dragging on the proceedings. As the facts reveal that the petitioner is not diligent in prosecuting the case, but however, if the averments made in support of the affidavit filed in I.A.No.333 of 2011 are to be believed, the counsel seemed to have wrongly recorded the date of hearing as 13-12-2010 instead of 18-11-2010 and hence, there appears to be some justification for the petitioner not to be present in the Court on 18-11-2010. Since more than four years' time has elapsed, but however, valuable rights of the petitioner in a property, which is the subject matter of consideration in Appeal, is at stake, I prefer to set aside the order dated 18-11-2010 and restore A.S.No. 13 of 2008 to file subject to the petitioner herein depositing a sum of Rs.3,000/- (Rupees three thousand only) towards costs of this Revision, to be deposited to the credit of A.S.No. 13 of 2008 on or before 15-04-2015 and upon such deposit being made, let the Appeal be decided on merits as expeditiously as possible, preferably within a maximum period of two months. However, no adjournments shall be granted in normal and ordinary circumstances at the instance of the petitioner herein. If, for any reason, the costs are not deposited and without there being any extraordinary reason for seeking adjournment, repeated adjournments are sought for, the Appeal shall stand dismissed, without any further reference to this Court. Upon deposit of an amount of Rs. 3,000/- is being made to the credit of A.S.No. 13 of 2008, the Court will makeover the said money to the party, who succeeds in the said Appeal.

With this, the Revision stands allowed at the admission stage, but however, without costs.

Consequently, the miscellaneous petitions, if any, stand disposed of.

NOOTY RAMAMOHANA RAO, J.

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20.03.2015.