

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.3288 of 2015

Date: 26-11-2015

Between:

Puramsetti Varalakshmi

.. Petitioner

AND

Puramsetti Ammaji

.. Respondent

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.3288 of 2015

ORDER:

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This Civil Revision Petition is filed by the defendant in O.S.No.217 of 2009 on the file of Principal Senior Civil Judge's Court, Kovvur. An *ex parte* decree was passed on 31-03-2010. In the suit filed by the respondent herein for cancellation of registered settlement deed dated 01-03-2004, after passing an *ex parte* decree on 31-03-2010, she filed I.A.No.1138 of 2012 stating that the plaintiff is the co-sister of the petitioner and is a permanent resident of Kamsalipalem village. She executed a registered settlement deed and the petitioner has been in continuous possession of the same from the date of registered settlement deed and when the petitioner went to the property for visit, she came to know from the husband of the plaintiff and the plaintiff that the settlement deed was cancelled and she had no right to enter into the schedule property. She stated

that she came to know about the *ex parte* decree in the first week of February, 2012 and the respondent showed a Xerox copy of the decree. Later she became sick and could not approach her advocate. Then she filed the above application seeking condonation of delay of 30 days in filing the application under Order 9 Rule 13 CPC.

A counter was filed by the respondent-plaintiff denying the said averments and stating that the petition seeking condonation of delay of 30 days is not maintainable when an *ex parte* decree was passed on 31-03-2010.

When the petitioner claimed ignorance with regard to the court proceedings, this Court called for the original record from the Court below and noticed that an endorsement was made on 28-10-2009 as follows:

“Defendant called absent. Service by RP sufficient. For plaintiff’s evidence call on 10-11-2009”

In view of the above, it cannot be said that the petitioner is not served with the suit summons. If the petitioner’s application is *bonafide*, the petitioner should have filed the application seeking condonation of delay from the date of decree, but she cannot file an application seeking condonation of delay of 30 days from the date of knowledge. The petitioner did not file any certificate in support of her plea. When the petitioner has been stating that she continued to be in possession of the property, it is not believable that she came to know about the *ex parte* decree only in the month of February, 2012 when the decree was passed on 31-03-2010. The trial Court passed the following order considering the facts and circumstances of the case.

“The *ex parte* decree dated 31-03-2010. The present petition is filed on 27-04-2012, two years after date of decree. But, the petitioner is seeking to condone delay of 30 days only. The petitioner mentioned in the petition affidavit that she came to know in the month of February. The month February in which year is not mentioned by the petitioner to calculate the period of limitation and more over the petitioner mentioned that she fell sick. Immediately, after getting knowledge about the decree. But, the petitioner has not filed any medical record about her sickness. The delay from the date of decree is more

than two years i.e. from 31-3-2010 to 27-4-2012. The delay of the present application for filing after 756 days after decree but the petitioner is seeking condone the delay for 30 days only and the petitioner mentioned that she came to know for the month February and in which year is not mentioned in the petition and there is no record in her sickness, medical record for sickness. Even though she became seeking but medical record is not filed. In the above circumstances, petitioner failed to sufficient ground to condone the delay. Hence, petition is devoid of merits. Petition liable to be dismissed.....”

I am in agreement with the said order and the Civil Revision Petition is liable to be set aside.

Accordingly, the Civil Revision is dismissed. No costs.

A. RAMALINGESWARA RAO, J

Date: 24-11-2015

Note: The Registry is directed to retransmit the record of the Court below.

B.O./Ksn