

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

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A.S.M.P.Nos.990, 991 and 992 of 2015
AND
APPEAL SUIT No.342 of 2010

Between:

Deddupudi Varahanarasimhachari (died per LRs)
and others

...Petitioners

and

Deddupudi Venkata Bhaskara Satyanarayana

... Respondent

DATE OF JUDGMENT PRONOUNCED: **10.08.2015**

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether his Lordship wish to
see the fair copy of the Judgment? | Yes/No |

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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A.S.M.P.Nos.990, 991 and 992 of 2015
AND
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COMMON ORDER:

A.S.M.P.No.990 of 2015 is filed under Section 5 of the Limitation Act, 1963, to condone the delay of 1571 days in filing a petition under Order XXII Rule 9 of the Code of Civil Procedure, 1908 (for short, 'CPC') to bring the legal heirs of the deceased sole appellant in the aforesaid appeal on the sole ground that the delay has occurred due to death of the Advocate clerk.

A.S.M.P.No.991 of 2015 is filed to set aside the abatement caused due to death of the sole appellant in the aforesaid appeal.

A.S.M.P.No.992 of 2015 is filed to bring the legal representatives of the deceased sole appellant as appellants 2 to 4 in the aforesaid appeal.

In the affidavit filed in support of the petition, it is stated at para 3 of the affidavit that during pendency of aforesaid appeal, father of the petitioners died on 19.09.2010. During his life time, he executed a registered Will, dated 01.01.2003, and in view of execution of the said Will, the petitioners being legatees under the Will, became entitled to share in the plaint schedule property; that the petitioners are not aware of pendency of the appeal before this Court, but during last week of April, 2015, they came to know about pendency of the appeal through the Advocate, who is practicing before this Court and therefore, the delay has occurred.

Learned counsel for the petitioners across the Bench submitted that due to death of his clerk, steps could not be taken to implead the legal heirs of the deceased sole appellant and hence, he prays to condone the delay.

As seen from the allegations made in the affidavit filed in support of the petition, the cause shown by the petitioners is that they are not aware of pendency of appeal though they are legatees under the Will allegedly executed by their father. However, during arguments, learned counsel for the petitioners totally changed the cause while submitting that due to death of his

clerk, steps could not be taken to implead the legal heirs of the deceased sole appellant. Both causes are inconsistent with one another. Even assuming for a moment that the cause shown by the petitioners is accepted, the abnormal delay of 1571 days in filing a petition to bring legal representative, cannot be condoned. Ignorance about pendency of appeal while claiming title to the property in question as legatees under the Will, cannot be a cause which prevented them from taking steps to prosecute further proceedings in the matter. In the absence of any cause, muchless sufficient cause, the Court cannot condone such abnormal delay. Hence, I find no ground to condone the abnormal delay of 1571 days in filing a petition under Order XXII Rule 9 CPC to set aside abatement of appeal by operation of law on account of failure to bring the legal heirs of the deceased sole appellant and the petition deserves to be dismissed.

Accordingly, A.S.M.P.No.990 of 2015 is dismissed. In view of dismissal of A.S.M.P.No.990 of 2015, A.S.M.P.Nos.991 and 992 of 2015 are dismissed and consequently, A.S.No.342 of 2010 is rejected.

M.SATYANARAYANA MURTHY,J

AUGUST 10, 2015
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Dt: 10.08.2015

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