

THE HONOURABLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.87 of 2015

ORDER:

The defendant in O.S. No.91 of 2010 on the file of the Court of Senior Civil Judge, at Sircilla, Karimnagar District, is the petitioner in the present revision filed under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'). The present revision challenges the Order dt.07.11.2014, dismissing the I.A. No.269 of 2013 in O.S. No.91 of 2010 filed by the petitioner herein.

Heard Sri V.V. Ramana Rao, learned counsel for the petitioner apart from perusing the material available in this Court. None appears for the respondent despite service of notice.

The respondent herein instituted the Suit in O.S. No.91 of 2010 on the file of the Court of Senior Civil Judge. The learned Senior Civil Judge decreed the said Suit *ex parte* on 28.03.2012. Thereafter, the defendant/petitioner herein filed I.A. Nos.269 of 2013 and 270 of 2013 under the provision of Section 5 of Limitation Act, seeking condonation of delay of 342 days in filing the petition to set aside the *ex parte* decree and under Order IX Rule 13 C.P.C. to set aside the *ex parte* decree dt.28.03.2012 respectively. The plaintiff/ respondent herein filed the counter affidavit, resisting the said applications. The learned Senior Civil Judge, by virtue of his order dt.07.11.2014, dismissed I.A. No.269 of 2013.

Calling in question the validity and sustainability of the said Order, the present revision has been filed.

It is contended by learned counsel for the petitioner that the Order passed by the Court below is erroneous, contrary to law and is opposed to Section 5 of the Limitation Act. It is further contended by learned counsel for the petitioner that the learned Judge grossly erred in dismissing the application contrary to the settled proposition of law that the Courts are supposed to be liberal while dealing with the petitions filed under Section 5 of Limitation Act. It is further contended that had the averments in the affidavit filed in support of the application been considered from proper perspective, the Order impugned in the present revision would not have been emanated. It is nextly contended by learned counsel for the petitioner that since the subject matter of the Suit is for partition, the learned Senior Civil Judge ought to have considered the request of the petitioner liberally.

In the above background, now the issues which this Court is called upon to answer in the present revision are,

- i) Whether the Order passed by the learned Senior Civil Judge is in accordance with law?
- ii) Whether the Order under challenge warrants interference of this Court under Section 115 C.P.C.?

The information available before this Court manifestly discloses that the Suit in the present case is

one for partition of a house property and the market value is shown as Rs.5,37,700/- and the property is situated at Sircilla Town, Karimnagar District. It is the case of the defendant/ petitioner herein that after the death of his son-in-law, who died within one year after the marriage with the petitioner's daughter, he had fallen sick and bed ridden. It is also the case of the petitioner herein that he came to know the *ex parte* decree dt.28.03.2012 on 08.04.2013 when he received notice from the Advocate-Commissioner.

In the counter affidavit filed by the respondent herein, there is absolutely no dispute with regard to the death of the son-in-law of the petitioner herein within one year after the marriage. Another significant aspect which has bearing on the present application is that the Suit was dismissed on 24.09.2010 and later by virtue of the orders in I.A. No.618 of 2010 filed by the respondent herein, the Suit was restored subject to payment of costs of Rs.300/-.

The learned Senior Civil Judge in the order impugned rejected the request of the petitioner herein on the ground that the petitioner herein failed to furnish date of death of his son-in-law and the date on which he was bed ridden and also found fault with the petitioner herein in not filing medical record.

According to the learned counsel for the petitioner, the defendant/ petitioner herein enclosed written statement also along with the present I.A. and the copy of

the said written statement is also placed on record by the learned counsel for the petitioner.

Paragraph 7 of the written statement reads as under:

“That the real facts of the case are that, the defendant is the owner in possession of the suit schedule house bearing Municipal Door No.3-3-87 situated at Kummarigally locality of Sircilla Town and Mandal. Previously, the mother of the defendant late Burra Narsamma, w/o. late Kishtaiah was the owner in possession of the suit schedule house. The mother of the defendant was blessed with two sons the defendant herein and late Burra Narsaiah, who died issueless at about 35 years back leaving his mother as his sole legal heir, as he was issueless and his wife left for her parents house and subsequently married one Lacha Goud of Dharmaram Village and three daughters by name late Bathini Shanthavva w/o. Sayavva, Balasani Sathavva w/o. Yadaiah and Narapatla Lachavva w/o. Kanakaiah. The mother of the defendant late Burra Narsamma died three years back leaving this defendant and her three daughters as her legal heirs. During the life time of the mother of this defendant only gave the suit schedule house to this defendant in the presence of her daughters, who accepted the same as this defendant maintained their mother and also performed her obsequies etc. The plaintiff is not a family member of this defendant. Prior to filing of this suit only the plaintiff got issued a legal notice, dated 25.06.2010 to this defendant through her counsel by giving her wrong description as Burra Anjali, d/o. late Narsaiah r/o. Sircilla town, but she is called as Parvathi Anjali w/o. Srinivas, r/o. H.No.2-4-6, Anantha Nagar locality of Sircilla Town and Mandal. This defendant has given reply to the said notice on 14.07.2010 through his counsel. In the said notice the plaintiff got mentioned that, her father died 30 years back and that, her mother also died. The elder brother of this defendant late Narsaiah died 35 years from this day, but not 30 years back from the date of her legal notice dated 25.06.2010. The plaintiff pleaded that, the mother of this defendant late Burra Narsamma died long back leaving behind her Burra

Narsaiah and the defendant being her sons as legal heirs and representations, but late Burra Narsaiah died 35 years back, whereas his mother died 3 years back, hence the plaintiff is the stranger to the family of Burra Narsamma and not entitled to claim any share in the suit schedule properties.”

Though there are certain latches on the part of the petitioner herein in approaching the Court immediately, taking into consideration the totality of the circumstances and the nature of controversy, this Court is of the definite opinion that the petitioner herein is entitled for opportunity to prosecute the Suit on merits.

It is appropriate to refer to the Judgment of this Court in **Ithagani Lachaiah and others v. Joint Collector and Additional District Magistrate, Nalgonda and others**^[1], wherein this Court held that liberal approach is required to be adopted while considering the delay application.

For the aforesaid reasons, the Civil Revision Petition is allowed, setting aside the Order dt. 07.11.2014, in I.A.269 of 2014 in O.S. No.91 of 2010 passed by the Senior Civil Judge, at Sircilla, Karimnagar District and consequently the said I.A. No.269 of 2014 is allowed. No order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SESA SAI, J

February 19, 2015
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