

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**CRP.No.2429 of 2014**

**ORDER :**

This Revision is filed under Section 115 C.P.C. challenging the order dt.19.07.2014 in I.A.No.105 of 2014 in I.A.No.1203 of 2014 in O.S.No.403 of 1982 on the file of Senior Civil Judge, Sattenapalli.

**2.** The petitioners herein are some of the decree-holders in O.S.No.403 of 1982 filed for partition of the plaint schedule properties in which a preliminary decree had been passed on 12.03.2013 by the Principal Senior Civil Judge, Guntur.

**3.** Thereafter, an application to pass final decree was filed by decree-holders. The respondent nos.1 and 2, who are Judgment-Debtors, filed objections to the counter and also against the Advocate-Commissioner's report when the final decree petition was before the Principal Senior Civil Judge, Guntur.

**4.** Thereafter, because of constitution of the Court of the Senior Civil Judge, at Sattenapalli, the final decree petition was transferred from the Court of Principal Senior Civil Judge, Guntur to the Court of the Senior Civil Judge, Sattenapalli, since that Court had jurisdiction over the subject matter.

5. A final decree was passed on 12.03.2013 by the Senior Civil Judge, Sattenapalli setting *ex parte* respondent nos.1 and 2 herein.

6. Thereafter, on 29.01.2014 respondent nos.1 and 2 filed an application under Section 5 of the Limitation Act, 1963 to condone the delay of (294) days in filing an application to set aside the final decree dt.12.03.2013. They contended that they were informed by their counsel that once the matter was transferred from the Court of the Principal Senior Civil Judge, Guntur to the Court of the Senior Civil Judge, Sattenapalli, the transferee Court would re-number the matter and again issue notice to them/him; that he would then inform them if such a notice was served on him; no such notice was served on them about the date of hearing of final decree petition, and only after the Court Amin visited the premises on 28.01.2014 to execute the decree and to deliver possession of the properties they came to know about the final decree dt.12.03.2013. They contended that because they did not participate in the enquiry to be conducted before passing of final decree, grave prejudice would be caused to them, and the delay of (294) days in filing the application under Order 9 Rule 13 to set aside the *ex parte* final decree dt.12.03.2013 be set aside.

7. Counter-affidavit was filed by petitioners opposing the same and raising a plea that respondent nos.1 and 2

were aware about the Court proceedings. They pleaded that after the establishment of the Court of Senior Civil Judge, Sattenapalli also, their counsel had appeared and sought time. They further denied the allegation that notice was not served on respondent nos.1 and 2 or their counsel. Other pleadings on merits were also raised and the contentions of respondent nos.1 and 2 were denied.

**8.** By order dt.19.07.2014, the Court below allowed the said application. It held that verification of record reveals that respondent nos.1 and 2 had not been served any notice after the matter was transferred from the Court of the V Additional Senior Civil Judge Court, Guntur to the Court of the Senior Civil Judge, Sattenapalli; that they were set *ex parte* on 12.03.2013; and therefore, there was no fault on their part; and they should not be punished without any fault on their own since they had no knowledge about the transfer of final decree petition to the Court at Sattenapalli.

**9.** Challenging the same, the present Revision is filed.

**10.** Although counsel for petitioners sought to place reliance on a docket which seems to suggest that time had been sought on behalf of respondents, it is not clear whether respondents referred to therein were respondent nos.1 and 2 or some other respondents, since it is not disputed that other than respondent nos.1 and 2 there

were several other respondents/defendants. Once the Court below has verified the record and came to the conclusion that no notice was served on respondent nos.1 and 2 before it passed the final decree in I.A.No.1203 of 2014 on 12.03.2013, I am of the view that it was justified in condoning the delay of (294) days in filing the application under Order 9 Rule 13 C.P.C. to set aside the said final decree dt.12.03.2013. I, therefore, do not find any merit in this Revision, and it is accordingly dismissed. No order as to costs.

**11.** As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 07.10.2015

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