

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 3390 OF 2010

ORDER:

This Revision is filed under Section 115 of CPC challenging the order dated 25.6.2010 in I.A.No. 152 of 2010 in O.S.No. 184 of 2006 of the Junior Civil Judge Chevella, Rangareddy District at Chevella.

Heard Mr. Krishna Reddy for Pottigari Sridhar Reddy, learned counsel for the petitioner.

Petitioner herein is the first defendant in the above suit. The said suit was filed by respondents 1, 2 herein against petitioner and the third respondent for partition and separate possession in respect of suit schedule property. Petitioner/first defendant was set ex-parte in the suit, which was decreed ex-parte on 3.4.2007.

On 22.3.2010, I.A.No. 152 of 2010 was filed under Section 5 of Limitation Act, 1963 by the petitioner to condone the delay of 1146 days in filing the petition under Order 9 Rule 13 CPC to set aside the ex-parte decree.

In the affidavit filed in support of this application, petitioner contended that he is aged about 65 years and was facing various health problems, because of which, he had not consulted his advocate. He disputed the right of respondents 1 & 2 in the property. He contended that he has a good case on merits. No material is filed in support of the plea of the petitioner that he was suffering from any health problem.

Counter was filed by respondents 1 & 2 opposing the condonation of delay.

By order dated 25.6.2010, the Court below dismissed I.A.No 152 of 2010. It held that even after the decree in the suit, notices were issued to the petitioner for appointment of an Advocate Commissioner in the final decree petition; the Advocate

Commissioner also demarcated the suit land as per the decree; no valid reasons were furnished by the petitioner for condonation of delay; and that the application to condone the delay was filed with a malafide intention and therefore, does not deserve any consideration.

Counsel for the petitioner would contend that the petitioner, on account of ill-health, could not file the written statement and contest the suit; since the substantial interest of the petitioner are affected, it is a fit case to condone the delay in filing the petition to set aside the ex-parte decree; and I.A.No. 152 of 2010 should have been allowed by the court below.

It is not the case of the petitioner that he did not receive any summons in the suit. No material is placed by the petitioner in support of his plea of alleged illness or regarding the duration of illness, which prevented him from communicating with his counsel and defend the suit. In the absence of any material to show that the petitioner was prevented in any way from contesting the suit, the delay of 1146 days in filing the petition under Order 9 Rule 13 CPC to set aside the ex-parte decree in the suit cannot be condoned. Therefore, I do not find any merit in the Revision.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04.06.2015

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