

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.1591 of 2015

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondents.

2. This Civil Revision Petition is filed challenging the order dated 03.03.2015 in I.A.No.78 of 2014 in A.S.No.Nil of 2014 on the file of the Court of the District Judge, Ananthapuram (for short, appellate Court).

3. The petitioner in I.A.No.78 of 2014 in the proposed appeal against the judgment and decree in O.S.No.29 of 2007 on the file of the Court of the Junior Civil Judge, Rayadurg (for short, trial Court) is the petitioner herein. She was the third defendant in O.S.No.29 of 2007 which was filed for partition and separate possession. The trial Court decreed the said suit, by judgment and decree dated 19.10.2011. Challenging the same, the second defendant therein, who is the fifth respondent herein, filed A.S.No.12 of 2012 before the appellate Court making the petitioner herein as a respondent and she engaged an Advocate. The appellate Court allowed A.S.No.12 of 2012 in respect of item No.1 of suit schedule property, by judgment and decree dated 08.11.2012. Challenging the same, the plaintiffs filed S.A.No.441 of 2013 before this Court and this Court, by judgment dated 11.09.2014, dismissed the same confirming the judgment of the appellate Court. When S.A.No.441 of 2013 was pending, the petitioner herein filed I.A.No.78 of 2014 before the appellate Court seeking condonation of delay of 946 days in filing the appeal with the following averments.

“ I am the petitioner herein and the appellant in the above appeal. I submit that the respondents 1 to 3 herein has filed O.S.29/2007 on the file of Junior Civil Judge, Rayadurg for partition and separate possession of their alleged share in the plaint schedule property. The said suit was preliminary decreed on 19-10-2011. I submit that I have purchased Item No.2 from Boya Kumara Swamy under the registered sale deed on 22.3.99 for valid consideration. I submit that the respondents 1 to 3 herein are powerful persons in the village. As they won the suit,

they threaten me, I left my village and went to some other places in Karnataka state for my livelihood. I submit that 5th respondent herein has filed A.S.12/12 on the file of this Honourable Court against the decree and judgment of the lower court O.S.29/2007. In the said appeal, I have received notice and engaged an advocate, after that, again I went to some other places in Karnataka state as I could not live in my native place as the respondents 1 to 3 herein are very powerful persons. I have no legal knowledge. I have to file separate appeal. I could not file appeal against the decree and judgment passed in O.S.29/2007 on the file of junior civil judge, Rayadurg. I submit that recently I came to Anantapur and file copy application for decree and judgment of lower court in A.S.12/2012 and the same were given on 30.6.2014. Hence there is a delay of 946 days in filing appeal against the decree and judgment O.S.29/2007 on the file of junior civil judge, Rayadurg. I got valid case. Hence, I am herewith filing appeal with condone delay. Non filing of appeal within time is neither intention nor wanton. If the Honourable Court is not condone the delay of 946 days in filing appeal against the decree and judgment in O.S.29/2007 on the file of junior civil judge, Rayadurg, I will be put to great loss and damage.”

4. A counter-affidavit was filed by the second respondent in the said application, who is none other than one of the plaintiffs, stating that the petitioner intentionally did not lead any evidence in the suit and failed to prefer any appeal against the judgment and decree in O.S.No.29 of 2007. In those circumstances, the application of the petitioner was dismissed with costs by the appellate Court, by order dated 03.03.2015.

5. In the facts and circumstances of the case, I am in agreement with the order of the appellate Court dated 03.03.2015 in I.A.No.78 of 2014 in A.S.No.Nil of 2014 and the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 11.12.2015
TJMR