

HON'BLE SRI JUSTICE R.SUBHASH REDDY

CIVIL REVISION PETITION No.1035 of 2015

ORDER :

This Civil Revision Petition, under Section 115 of C.P.C., is filed by the petitioner/defendant No.2, aggrieved by the order and decree dated 30.12.2014 in I.A.No.655 of 2014 in I.A.No.510 of 2013 in O.S.No.350 of 2005 passed by the Principal Senior Civil Judge, Gudivada, Krishna District, dismissing the application filed by him under Section 5 of the Limitation Act, to condone the delay of 394 days in filing petition to set aside the exparte preliminary decree.

2. The 1st respondent/plaintiff filed the aforesaid suit against the petitioner/defendant No.2 and other respondents herein for partition and separate possession of the suit schedule property. As per the written statement, the petitioner/defendant No.2 has pleaded to divide the property into nine shares. After completing the evidence of the 1st respondent/plaintiff, the petitioner/defendant No.2 was granted time from 13.9.2012 to 18.10.2012 for adducing his evidence. In spite of the same, the petitioner/defendant No.2 did not avail the said opportunity and a preliminary decree was passed on 7.12.2012. Aggrieved by the same, the petitioner/defendant No.2 has filed an application to set aside the exparte preliminary decree along with an application being I.A.No.655 of 2014

to condone the delay of 394 days in filing petition to set aside the exparte preliminary decree dated 7.12.2012. The Court below, after considering the material on record, dismissed the said application through the impugned order dated 30.12.2014. Hence, the present civil revision petition.

3. Sri G.L. Nageswara Rao, learned counsel for the petitioner/defendant No.2, contended that the petitioner/defendant No.2 is an agriculturist and during the pendency of the proceedings, at the intervention of elders, the matter was settled and, as such, he was under the impression that the 1st respondent/plaintiff would not pursue the matter, and he came to know about passing of preliminary decree after receiving notice in I.A.No.510 of 2013, as such, the delay of 394 days has occurred in filing the application to set aside the exparte preliminary decree dated 7.12.2012.

4. Heard learned counsel for the petitioner and perused the impugned order.

5. The submission of the learned counsel for the petitioner/defendant No.2 that the petitioner is an agriculturist and not aware of the statutory limitation period for filing application to set aside the exparte preliminary decree cannot be accepted. Further, the allegation of the petitioner/defendant No.2 that because of ongoing talks for settlement, he could not pursue the matter, which resulted in passing the exparte preliminary decree, cannot

be accepted for the simple reason that after passing of preliminary decree on 7.12.2012, in final decree proceedings, the petitioner/defendant No.2 has appeared through an Advocate on 10.6.2013, whereas the present application is filed on 5.2.2014. Even otherwise also, while the petitioner/defendant No.2 has pleaded division of the property into nine shares, as per the preliminary decree dated 7.12.2012, the Court below has ordered for division of property into 9 equal shares to the parties to the suit.

6. For the aforesaid reasons and as the suit is of the year 2005, I do not find any merit in this civil revision petition warranting interference by this Court.

7. Accordingly, this civil revision petition is dismissed, at the admission stage. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH

REDDY
20.03.2015.
Msr

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