The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.2799 of 2015

Dated 24.07.2015

Between:

Gadde Venkatapathi Rao

... Petitioner

and

Narla Jyothi and another.

...Respondents

Counsel for the petitioner: Mr.Narasimha Rao Gudiseva

Counsel for the respondents: None appeared

The Court made the following:

Order:

This Civil Revision Petition arises out of Order, dated 21.04.2015, in IA.No.1014 of 2014 in OS.No.188 of 2008, on the file of the Court of the learned Principal Junior Civil Judge at Mangalagiri.

I have heard Mr.Narasimha Rao Gudiseva, learned Counsel for the petitioner, and perused the record.

Respondent No.1 has filed the above-mentioned suit against the petitioner and

respondent No.2 for (i) declaration that the passage shown as X, X1, X2 and X3 in the plaint plan is the joint passage meant for the plot owners on either side of the suit passage connecting the Western Panchayat Bazaar; (ii) Mandatory Injunction to remove the AB wall put up across the passage; and (iii) Permanent Injunction restraining the petitioner and respondent No.2 from interfering with her right over the joint passage.

For convenience, the parties shall be hereinafter referred to as they are arrayed in the suit.

After the suit summons were served, the defendants entered their appearance through Counsel and filed written statement. During the trial, the plaintiff examined herself in chief on 08-11-2011. As there was no representation for defendant No.1, the cross-examination by defendant No.1 was recorded as Nil and the case was adjourned to 15-11-2011 for cross-examination by defendant No.2. As defendant No.2 was absent on 15-11-2011, the case was again adjourned to 24-11-2011. On the said date also, defendant No.2 was absent and therefore, the cross-examination by defendant No.2

was also treated as Nil, the plaintiff's side evidence was closed and the case was posted for defendants' side evidence on 01-12-2011. On 01-12-2011, defendant No.1 was absent and there was no representation on his behalf. Hence, the evidence on his side was closed and the case was posted for second defendant's evidence on 08-12-2011. On the said date, the second defendant was absent. Hence the evidence on his side also was closed. After hearing the arguments on 19-12-2011, the lower Court has decreed the suit in favour of the plaintiff.

Subsequently, defendant No.1 has filed an application for setting aside the *ex parte* decree. Along with the said application, he has filed IA.No.1014 of 2014 under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 915 days in filing the said Application. The only reason put forth by defendant No.1 in support of the IA was that he is residing at Hyderabad in connection with his business and education of his children and that, therefore, he was unable to attend the Court for cross-examining the plaintiff. The Court below, while holding that defendant No.1

failed to offer proper explanation, further observed that while defendant No.1 was prosecuting OS.No.87 of 2009 filed by him against the plaintiff in the Court of the learned Senior Civil Judge, Mangalari, he did not choose to prosecute the present suit. The fact that defendant No.1 was prosecuting his suit is not in dispute. The uncontroverted facts reveal that after entering appearance and filing written statement, the defendants have completely neglected the suit proceedings and allowed an *ex parte* decree to be passed and that even thereafter, the first defendant has not shown any diligence whatsoever in seeking to set aside the *ex parte* decree. Therefore, the lower Court has rightly rejected the IA filed by defendant No.1 for condonation of the inordinate delay of 915 days in filing the Application for setting aside the *ex parte* decree and I do not find any illegality or jurisdictional error in the order under revision.

For the above-mentioned reasons, the Civil Revision Petition is dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.3735 of 2015, filed by the

petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 24th July, 2015
LUR