

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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CIVIL REVISION PETITION No.1851 of 2015

AND

CIVIL REVISION PETITION (SR) NO.10129 OF 2015

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COMMON ORDER:

C.R.P.No.1851 of 2015 is preferred against the order passed in I.A.No.21 of 2015 in A.S.S.R.No.18645 of 2014 and CRP (SR) No.10129 of 2015 is preferred against the order passed in I.A.No.22 of 2015 in A.S.S.R No.18645 of 2015.

The petitioner in the revision petitions is the second plaintiff in the suit O.S.No.459 of 2009 on the file of the Junior Civil Judge, Rajendranagar, Ranga Reddy District. The first plaintiff in that suit was Sardar Joga Singh and the sole defendant is Sardar Narpath Singh. The suit is filed for a declaration that the plaintiffs are the legal heirs of late Sardar Deva Singh, who was the grandson of late Smt. Motibai, W/o Jhanda Singh and that the defendant be restrained by way of perpetual injunction by executing sham documents in respect of property in question i.e. land admeasuring Ac.1.20 guntas in Sy.No.2 (peradu) situated at Attapur Village, Rajendranagar Mandal, Ranga Reddy District. One Sardar Kartar Singh, the first respondent in this revision has preferred an appeal against the said judgment by preferring A.S.S.R No.18645 of 2015 on the file of the Principal District Judge's Court, Ranga Reddy at L.B. Nagar, Hyderabad. He moved two interlocutory applications therein, I.A.No.21 of 2015 and I.A.No.22 of 2015. I.A.No.21 of 2015 was preferred seeking leave of the Court to prefer an appeal, as he is not a party to the civil suit. I.A.No.22 of 2015 was preferred seeking condonation of delay of 1249 days in filing the appeal. Both these interlocutory applications are separately ordered on 13.04.2015 and hence, both these revisions are preferred.

In the affidavit filed in support of I.A.No.22 of 2015 seeking condonation of delay of 1249 days, it was the assertion of Sardar Kartar Singh, S/o late Sardar Gopal Singh that late Smt. Moti Bai was his mother. Hence, he filed a suit for declaration of title in O.S.No.223 of 2011 on the file of the Hon'ble III Additional District Judge, Ranga Reddy and in that suit, Sardar Joga Singh, who is impleaded as defendant No.3 to

O.S.No.223 of 2011, filed written statement on 29.07.2011 bringing out the fact that O.S.No.459 of 2009 is filed by him and that the said suit was decreed and hence, he was a legal heir of Sardar Deva Singh, who was the grandson of late Motibai, W/o Jhanda Singh. It was also brought out that, against the orders of Mandal Revenue Officer, Rajendranagar Mandal dated 31.12.2013, granting mutation and rectification of the revenue records in favour of Sardar Joga Singh and Smt. Sukhminder Kaur, the two plaintiffs in O.S.No.459 of 2009, Sardar Kartar Singh has preferred an appeal before the Revenue Divisional Officer, Rajendranagar Division and in that appeal, it was asserted by Sardar Joga Singh that the judgment and decree passed in O.S.No.459 of 2009 has become final and binding. That is how Sardar Kartar Singh has started initiating steps for preferring the appeal and secured the copies of the decree and judgment passed in O.S.No.459 of 2009 and thereafter he preferred A.S.SR.No.18645 of 2014. Since he is not a party to the civil suit, he instituted I.A.No.21 of 2015 seeking leave of the Court to prefer an appeal and I.A.No.22 of 2015 seeking condonation of delay of 1249 days. Both these applications are ordered by passing very brief orders.

Sri Krishna Kishore Kovvuri, learned counsel for the revision petitioner would contend that the matter was listed in fact before the Court below on 07.04.2015. On 07.04.2015, the learned Presiding Officer was on leave and hence, the matter was adjourned to 13.04.2015. But however, by mistake, the petitioner herein noted the date of posting as 23.04.2015. Consequently, the petitioner in this revision could not file counter on 13.04.2015 and the Court instead of providing atleast one opportunity to the party, straightaway proceeded, in the absence of the petitioner herein to order both the interlocutory applications. This is totally unfair way of dealing with the matters, particularly, where a huge delay of 1249 days which could not be explained properly was condoned and leave to appeal to a party, who has no connection whatsoever to the *lis* in O.S.No.459 of 2009 is granted only with a view to keep the litigation pending.

It is true, that before condoning a huge delay of 1249 days, appropriate consideration should have been bestowed by the Court instead of proceeding on the premises that since there is no one to contest, the delay can be condoned.

There appears to be something which requires a serious consideration in the whole issue. The petitioner herein was not the original plaintiff in O.S.No.459 of 2009. That O.S.No.459 of 2009 is preferred by Sardar Joga Singh, S/o Sardar Deva Singh

alone. That is why he prayed in the suit that the plaintiff be declared as a legal heir of Sardar Deva Singh, who is the grandson of late Motibai, W/o Jhanda Singh. Regarding late Smt. Motibai, it is asserted by Sardar Kartar Singh, the proposed appellant, that Motibai died on 18.06.1967 leaving behind her only daughter Raju Bai W/o Gurmeet Singh and that Raju Bai also died on 23.02.1977 and her husband also died leaving behind his father Sardar Deva Singh as the sole legal representative. Hence Deva Singh cannot be the grandson of Smt. Motibai. The present petitioner in this revision got herself impleaded as plaintiff no.2, by virtue of the orders passed in I.A.No.1065 of 2009 dated 14.12.2009. But however, there was no corresponding amendment in the relief portion in this suit and in less than two months after impleadment of the present petitioner herein as the second plaintiff in the suit, suit O.S.No.459 of 2009 came to be decreed on 03.02.2010.

The other extraordinary feature is that the original plaintiff sought for a declaration that he is the legal heir of Sardar Deva Singh, which is understandable, but the prayer in the suit did not stop there. It went on to add, "who was the grandson of late Motibai, W/o Jhanda Singh". It is noteworthy that Sardar Deva Singh was described to have died. Then, how can the said person, in the absence of a specific declaration be declared or treated to be the grandson of late Smt. Motibai, W/o Jhanda Singh. Therefore, the prayer in the civil suit is couched apparently in mysterious terms. Further, it is asserted that the sole defendant to the said suit Sardar Narpath Singh, S/o late Gopal Singh colluded with the two plaintiffs. In such circumstances, if a third party is preferring an appeal against such a decree and judgment, Courts are required to adopt a very liberal approach. In that view of the matter, it may not be fair for the Court to insist upon the third party to explain each day's delay in preferring the appeal. It is no doubt true that Sri Krishna Kishore Kovvuri sought to explain that in O.S.No.223 of 2011, Sardar Joga Singh filed a written statement on 29.07.2011 bringing out about the judgment and decree passed in O.S.No.459 of 2009. But still, the appeal was not preferred by Sri Kartar Singh immediately. Now, strangely, Sardar Joga Singh is staying away from the proceedings and he was set *ex parte*. When two plaintiffs jointly brought O.S.No.459 of 2009, now, only the second plaintiff is carrying the matter forward by contesting the case, duly showing the first plaintiff as a respondent. These intriguing facts have left an uncomfortable feeling in my mind, leaving scope to suspect that the parties are trying to overreach each other, so as to outfox the competitors with regard to a

valuable immovable property. They appear to be using the Court as a platform in this regard. It is one thing that a party indulges in a legitimate exercise and gets his status declared in the presence of all concerned and it is altogether a different thing to omit certain people or certain branch of people and then, proceed with declaratory/title suits. In these set of circumstances, I am of the opinion that, no serious prejudice would be caused to the petitioner herein by the orders passed by the Court below by contesting the appeal itself. Her rights to get the matter adjudicated on merits are not lost. In these set of circumstances, I am of the opinion that the interlocutory applications passed by the Court below in condoning the delay and granting leave to appeal against the judgment and decree in O.S.No.459 of 2009, the ends of justice are sought to be sub-served, more than being frustrated.

Therefore, I, do not see any error of exercise of jurisdiction indulged in by the Court below in allowing I.A.Nos.21 & 22 of 2015 for me to exercise revisional jurisdiction under Article 227 of the Indian Constitution.

Accordingly, both the civil revision petitions are dismissed. Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

07.10.2015
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