

\* HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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**+ CIVIL REVISION PETITION No. 1712 of 2015**

% **31<sup>st</sup> December, 2015**

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# Koppu Sathaiah and 2 others

... Petitioners...

AND

\$ Koppu Narsaiah and another

... Respondents...

! Counsel for the Petitioners : Sri M. Rajamalla Reddy

^ Counsel for the respondents : Sri Laxman Bachu

< Gist:

> Head Note:

? Cases referred:

1. 2008 (1) ALT 47

**HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**CIVIL REVISION PETITION No.1712 OF 2015**

**ORDER:**

This Civil Revision Petition is filed questioning the order dated 26.09.2014 in C.M.A.No.5 of 2011 passed by the Principal District Judge at Nalgonda.

The facts in brief are that the petitioners are the defendants in O.S.No.9 of 2004 on the file of Junior Civil Judge Court, Nalgonda. Respondents/plaintiffs filed the suit seeking permanent injunction against the petitioners with respect to the land in Sy.No.216 of Mada Yedavelli village, Narketpally Mandal, Nalgonda District over an extent of Ac.1-23 gts., The said suit was decreed *ex parte* on 28.07.2004. Therefore the petitioners filed I.A.No.246 of 2008 in O.S.No. 9 of 2004, on 28.12.2006, under Order IX Rule 13 CPC read with 151 Code of Civil Procedure read with Article 123 read with Section 5 of the Limitation Act, 1963 seeking setting aside of the *ex parte* order. It is stated in the affidavit filed in support of the I.A., that the suit summons were not received by them and as such they could not contest the suit and decreeing of the suit *ex parte* came to their knowledge only on 20.12.2006 and as such the petition is filed seeking to set aside the *ex parte* decree within 30 days from the date of knowledge of the *ex parte* decree. The said I.A. was resisted by the respondents-plaintiffs specifically denying the averments that the petitioners have not received any summons from the Court. The Court below after considering the record dismissed the I.A. The Order in I.A.No.246 of 2008 in O.S.No.9 of 2004 is carried in appeal before the Principal District Judge at Nalgonda in C.M.A. No.5 of 2011 and the same also came to be dismissed. Hence, the Civil Revision Petition.

Sri Rajamalla Reddy, learned counsel appearing for the petitioners passionately pleads that the petitioners are the original owners of the land, over which the respondents have obtained *ex parte* decree, having purchased the same through registered sale deeds in 1982, 1989 and 1996 over an extent of total Ac.2-19

guntas. Merely because the suit was decreed *ex parte* without service of notice on the deponents, inasmuch as the petitioners are original owners and are in possession of the suit schedule land, the Courts below in refusing to set aside the *ex parte* decree caused great injury to the rightful owners. The learned counsel for the petitioners seeks indulgence of the Court stating that no prejudice as such would be caused if the *ex parte* decree is set aside and the trial Court is directed to try the suit after taking into consideration of the material and evidence that may be placed by the respective parties. Learned counsel for the petitioners offers to compensate by way of costs to the respondents-plaintiffs. Learned counsel for the petitioners also placed reliance on the judgment of the Supreme Court in **Nahar Enterprises Vs. Hyderabad Allwyn Ltd., and Another**<sup>[1]</sup>.

The Civil Revision Petition is resisted by Sri Laxman Bachu, learned counsel appearing for the respondents-plaintiffs.

The case was heard at length, particularly considering the specific plea of the learned counsel for the petitioners that the petitioners are the owners of the property having purchased the same through registered sale deeds in the years 1982, 1989 and 1996, in the written statement also the petitioners had taken the same plea. As can be seen from the record and also orders of the Court below, the respondents-plaintiffs specifically pleaded that they are the purchasers of the land over an extent of Ac.1-23 cents through registered sale deed No.910 of 1996, dated 22.02.1996. The respondents-plaintiffs also in earlier occasion filed O.S.No.185 of 1999 on the file of Junior Civil Judge, Nalgonda against the petitioners seeking injunction with respect to the

property in Sy.No.215 and the said suit came to be decreed and thereafter the same was remanded back for fresh trial on account of the orders of the Appellate Court and the said suit was pending as on the date of O.S.No.9 of 2004. The boundaries of the land were specifically described in the plaint, wherein the petitioners-defendants were shown as the land owners adjacent to the suit schedule land. It is the specific case of the respondents-plaintiffs that the petitioners are interfering with their peaceful possession and enjoyment of the property. The suit summons were served on the defendants 1 to 3 on 09.01.2004. The receipt of summons by 2<sup>nd</sup> and 3<sup>rd</sup> defendants, who are petitioners 2 and 3 herein, is admitted. As stated earlier the affidavit filed in support of the I.A. by the 3<sup>rd</sup> defendant, who stated that the summons were not received by him is found to be a false statement. They were set *ex parte* on 15.04.2004 and thereafter the suit was decreed *ex parte* on 28.07.2004. E.P. No.314 of 2005 was filed seeking execution of the *ex parte* judgment and decree and the petitioners received notices on 31.01.2006. In other words, the statement made on affidavit by the petitioners that they came to be aware of the *ex parte* decree only on 20.12.2006 is contrary to the material found on record as found by the Courts below. Whatever may be the position with respect to the service of suit summons, admittedly they have received notices in E.P. No.341 of 2005 on 31.01.2006 at least within 30 days from that date they ought to have filed a petition seeking setting aside of the *ex parte* decree. However, the applications for setting aside *ex parte* decree dated 2.07.2004 is filed only on 29.12.2006 i.e., after 11 months from 31.01.2006. Further, they did not file an affidavit explaining the delay and setting out the sufficient cause for filing the application to set aside the *ex parte* decree after long lapse of more than two

years.

Viewed from any angle the explanation submitted for making a belated application beyond 30 days is not satisfactory. In the facts of the present case there is no error committed by the Courts below in dismissing the I.A. and confirmation thereof. The judgment cited by the learned counsel for the petitioner is distinguishable on facts as in the case cited by the learned counsel for the petitioners there was a specific plea taken that along with summons the suit plaint and the documents were not annexed and thereby there was non-compliance of Order V Rule 2 of C.P.C. There is no such plea in the present case. On the other hand there was no issue raised with respect to the non-compliance of any of the provisions of the C.P.C. In that view of the matter the said judgment has no application.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

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**CHALLA KODANDA RAM, J**

Dated: 31.12.2015  
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[\[1\]](#) 2008 (1) ALT 47