

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.338 of 2010

ORDER:

This Revision is filed challenging the order dt.03-11-2009 in I.A.No.230 of 2009 in O.S.No.119 of 2006 of the Junior Civil Judge, Rayadurg.

2. Petitioner is the legal representative of the plaintiff, who had filed the said suit for declaration of title and for perpetual injunction against respondents.

3. The sole plaintiff in the suit died on 02-05-2008. On 22-01-2009 his counsel filed a memo stating that the sole plaintiff died on 02-05-2008 and stated that he would take steps within a short period.

4. On 03-06-2009, learned counsel for deceased plaintiff filed a petition under Section 5 of the Limitation Act, 1963 (I.A.No.230 of 2009) to condone the delay of 244 days in seeking to set aside the abatement caused by the death of sole plaintiff, to set aside abatement and to bring on record the legal representatives of the deceased plaintiff i.e. petitioner.

5. Counter-affidavit was filed by respondents opposing the condonation of delay.

6. By order dt.03-11-2009, the Court below rejected the said application on the ground that an application to bring on record the

legal representatives of the sole plaintiff was filed in A.S.No.42 of 2006 pending before the III Fast Track Court, Anantapur and had been allowed on 07-11-2011 itself, but in the present case, in spite of the memo being filed on 22-01-2009, the application to bring on record the legal representatives of the deceased plaintiff was filed on 03-06-2009. It also held that there is abnormal delay in filing the application to bring on record the legal representatives and shows negligence on the part of petitioner. It also referred to the fact that the affidavit filed in support of the application for condonation of delay was signed in English and therefore the petitioner cannot contend that he was illiterate and he had informed his Advocate with delay about the date of death of sole plaintiff.

7. Challenging the same, this Revision is filed.

8. Learned counsel for petitioner contended firstly that applications for condonation of delay in seeking to set aside abatement are to be liberally considered; the 2nd petitioner herein though literate, was not aware about the period within which the application for bringing on record the legal representatives should be filed; and when he took the plea of illiteracy in the affidavit filed in support of the application for condonation of delay, it ought to be construed as lack of knowledge of this provision of law and not as if he has taken false plea about his education. He also contended that Advocate for the petitioners in the Court below had filed a memo on 22-01-2009 itself informing about the date of death of the sole

plaintiff and the Court below ought to have condoned the delay in filing the application for condonation of delay in seeking to set aside abatement by imposing some costs having regard to the stakes involved in the matter.

9. Learned counsel for respondents refuted the above contentions and supported the order passed by the Court below.

10. The suit was filed by petitioner's father i.e. deceased 1st plaintiff for declaration of his right and title over the suit schedule property by annulling the sale deed dt.02-03-2006 executed by 1st respondent in favour of 2nd respondent and for permanent injunction restraining respondents from in any way interfering with plaintiff's peaceful possession and enjoyment of the same. Therefore, there are substantial stakes involved in the suit.

11. There is no dispute that there is delay of 244 days in filing petition by petitioner to condone the delay in seeking to set aside abatement and to bring him on record as legal representative of plaintiff in the main suit. Admittedly, in the connected appeal, such application had been filed within time and had been allowed on 07-11-2008 itself. It cannot be said that there is any deliberate negligence on the part of petitioner in filing the application to bring him on record in the present suit and that there was an intention on the part of petitioner to drag on the proceedings indefinitely. I am of the view that the Court below is not right in drawing an inference that the

petitioner had no interest in bringing him on record as the legal representative of the deceased plaintiff.

12. Also merely because the other legal representatives are not brought on record, the Court cannot reject the application for condonation of delay in seeking to set aside abatement.

13. For the aforesaid reasons and in the interest of justice, the Civil Revision Petition is allowed; the order dt.03-11-2009 in I.A.No.230 of 2009 in O.S.No.119 of 2006 of the Junior Civil Judge, Rayadurg is set aside and the said I.A. is allowed, subject to the petitioner depositing costs of Rs.2,000/- (Rupees Two Thousand only) to the credit of the suit within four (04) weeks from the date of receipt of a copy of this order. Liberty is given to respondents to withdraw the amount after its deposit by petitioner. It is made clear that if there is any default in complying with this condition, the Civil Revision Petition shall stand dismissed. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-11-2016
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