

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

[Special Original Jurisdiction]

WEDNESDAY THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND SIXTEEN

PRESENT
HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION NO. 4745 OF 2016

Between:

Atchamsetty Malleswari & Anr. ... Petitioners/Defendants 2 & 3

V/s.

Nimmisetty Subrahmanyam & Anr.... Respondents



Counsel for the Petitioners: Sri GVS Mehar Kumar

Counsel for the Respondent: None appeared

The court made the following: [order follows]

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION NO. 4745 OF 2016

ORDER :

Aggrieved by the docket order dated 02/12/2015 passed by the Additional Senior Civil Judge, Narasaraopet, Guntur district, in I.A.No. 349 of 2012 in OS.No. 184 of 2002 dismissing the petition filed by the petitioners/defendants 2 and 3 under Order-9, Rule13 and section 5 of Limitation Act seeking to condone the delay of 3029 days in filing the petition under Ordre-9, Rule-13 and section 151 of C.P>C., this Civil Revision Petition is filed by the petitioners/defendants 2 and 3 under section 115 of CPC.

2. The case of the petitioners before the court below is that during the pendency of the suit first defendant died and the same was not informed to the court. The petitioners did not receive any summons in the suit. The Plaintiff made paper publication, however, no knowledge about the filing of the suit and exparte decree was passed on 17/3/2014. Later the plaintiff filed final decree petition in

I.A.No. 171 of 2012 in the suit and the petitioners received summons and on going to the court on enquiry they came to know that the ex-parte decree was passed against them, however, they had no knowledge about the same.

3. The respondent/plaintiff filed counter contending that the petitioners themselves stopped their participating in the proceedings and came forward with false allegations. The petitioners are trying to put hurdle to the enjoyment of the fruits of the decree by the plaintiff by way of false allegations. The petitioners are no other than the family members of the respondent and they were aware about the suit proceedings from the beginning. If the partition of the property is carried out the petitioners can also get their share in the final decree proceedings and their shares cannot be defeated by law in case they participate in the final decree proceedings, as the suit is filed for partition and division of properties among the family members.

4. Learned trial court has recorded that the suit was filed by the respondent for partition of schedule property. In the suit, the defendants 1 and 4 remained ex-parte. On issuing paper publication, summons were issued to the defendants 2 and 3 and when they failed to appear before the court below, they were remained ex-parte and suit was decreed on 17/3/2004 partitioning the schedule properties into two equal shares and to allot one such share to the plaintiff.

5. It is pertinent to mention that the petitioners filed the aforesaid I.A. 349 of 2012 in OS.No. 184 of 2002 seeking to condone the delay of 3029 days stating that the petitioners were not aware about the suit proceedings and they came to know only on filing final decree proceedings on receipt of summons in the case.

6. The petitioners are no other than the sisters of the plaintiff and he filed the suit in the year 2002. The case of the petitioners is that the death of D-1 was taken on record. Thus, keeping in view the abnormal delay of 3029 days in filing the above I.A., the trial

court has rightly dismissed the same. In the present revision also, delay has not been properly explained by the petitioners either before the court below or before this Court. I do not see any ground to interfere with the order impugned in this revision and the learned trial Judge gave cogent reasoning for his conclusion.

7. I find no merit in this Civil Revision Petition and the same is accordingly dismissed at the admission stage.

5. As a sequel, miscellaneous petitions if any, pending in this Civil Revision Petition shall stand disposed of.



JUSTICE SURESH KUMAR KAIT.

23/11/2016

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HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION NO. 4745 OF 2016



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