

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No. 334 of 2015

Order:

The petitioners herein are the defendants in OS No.418 of 2011 on the file of the Additional Senior Civil Judge, Anantapur. The respondent herein filed the said suit for partition and separate possession of half share in the plaint schedule property. The suit summons were sent to the address mentioned in the cause title of the defendants and the first defendant refused to receive the same, when it was sought to be served through process server. However, the service through postal authorities was returned for want of correct name. All the defendants were residing in the same address and no application is filed by the other defendants except by the first defendant. Now, the first defendant filed the present application seeking condonation of delay of 535 days in filing the petition to set aside the *ex parte* decree, dated 05.01.2012, on the ground that her real name is L. Vijaya Lakshmi and in the cause title in the plaint she was shown as L. Lakshmi Bai and, thus, summons were not received by her. She also stated that she was not in the village during 15.10.2011 to 30.11.2011 as she was admitted in the hospital at Bangalore at that time. She sought to set aside the *ex parte* decree not only on her behalf, but also on behalf of defendants 2 to 4.

2. The respondent/plaintiff filed a counter stating that the first defendant would be called as Lakshmi Bai also, though, her name is Vijaya Lakshmi. It was denied that the first defendant was in the hospital during the relevant period of time.

3. Taking the same into consideration, the trial Court passed the following order, while dismissing the application on 06.09.2014.

“On perusal of contentions of both the parties it is evident on record that the petitioner Nos.2 to 4 have not

made any plea on their behalf for refusing the summons and to condone the delay in filing the petition for set aside of *ex parte* decree. It is the only contention of the 1st petitioner that her name has not been mentioned correctly and she was out of station at Bangalore and was treated as in-patient. On perusal of the medical certificate there is no such mention as the petitioner was in-patient during the said period nor any records submitted to that effect.

On perusal and scrutiny of Aadhar Card, Voter Card and Ration Card in the name of 1st petitioner, no doubt the name of 1st petitioner is shown as L. Vijaya Lakshmi and not as L. Lakshmi Bai in respect of the same. In the light of the contention of the respondent that the husband's name and the door number are correctly shown. Nothing could be explained with regard to the same. It is not the case of 1st petitioner that any other person is in the house with such husband's name in the said particular door number. The summons from the postal authorities shows that the same is returned for want of correct name. But it has been refused to the process server in receiving summons. Therefore it is to the observation of this Court that the 1st petitioner was at the said door number on the said day so as to refuse the summons and to state that the name of 1st petitioner is incorrect in the notice sent through post.

On perusal of the record there is clear mention that the summons were refused by all the petitioners. The reasons made by the 1st petitioner in the instant petition are not sufficient nor satisfactory. In the light of above discussion and observation the inordinate delay cannot be condoned at this stage when the respondent already taken steps by way of filing petition for final decree vide IA 78 of 2013. Therefore, the petition is liable to be dismissed. Accordingly, point for consideration is answered.

In the result, petition is dismissed without costs.”

4. This Court has carefully perused the affidavit filed in support of the petition seeking condonation of delay of 535 days in filing the petition to set aside the *ex parte* decree. It is evident from the above order that the first defendant refused to receive the summons, when they were sought to be served through process server. The house address of all the defendants was same. There is no explanation as to why the other defendants had not attended the Court. Even the

medical certificate did not show that the first defendant was in Bangalore at relevant point of time. This Court is satisfied with the reasoning given by the trial Court in dismissing the petition and the same is hereby confirmed.

5. Accordingly, the Civil Revision Petition is dismissed. However, in the circumstances, no costs.

6. As a sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.
Date: 01.02.2016
Nsr

RAMALINGESWARA RAO, J.