

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.1485 of 2011

ORDER

Revision petitioner was a minor plaintiff represented by mother (since became major as on date) in O.S.No.72 of 2001 on the file of II Additional District Judge's Court, Ranga Reddy District. The minor represented by mother maintained the suit for partition and separate possession of the undivided interest in the plaint schedule property in seeking the relief against the defendant Nos.1 to 4. While the suit was in progress of trial, it was dismissed for default before the trial Court on 04.02.2003. It was subsequently, about 683 days later to the said dismissal order supra, application under Order IX Rule 9 of the Code of Civil Procedure coupled with application under Section 5 of Limitation Act in I.A.No.171 of 2005 was maintained against selfsame defendants/respondents seeking to condone the delay in filing the application to set aside default dismissal order. The only averment for the condonation of delay is that the defendants who include husband of the plaintiff made false representations with a false promise by make believed her to allot share to the minor plaintiff represented by her as guardian, no doubt by saying further of there are alleged threats and abuses including on the lives in succumbing to their undue influences and threats. The trial Court having considered after contest dismissed the application having found no sufficient cause as contemplated by Section 5 of Limitation Act. It is now impugning the same by maintaining revision leave about Order IX Rule 9 application is rejected or not to maintain a separate revision there against if at all rejected, for nothing can be kept pending for no legs to sustain once Section 5 Limitation Act application was ended in dismissal even to number the application under Order IX Rule 9 CPC. The contentions in the revision grounds are that the trial Court adopted a too technical approach instead of considering the facts and law to apply properly of

the suit is for partition and the approach to be adopted is quite different to other suits against 3rd parties to the *lis*. It is also contended that the trial Court grossly erred in not adopting pragmatic approach and in arriving an erroneous conclusion of mother of plaintiff pursuing the interest of the minor as next friend was as if negligent.

Respondents were served and failed to appear.

Heard and perused the material on record.

The scope of revision is very limited. It must be shown not only illegality or impropriety in the impugned order but also prejudice therefrom caused for the Court to interfere. The allegation of the next friend-cum-mother of the minor plaintiff was under coercion or undue influence or victim of fraud or of other extraneous influences that made her to accommodate the defendants to file a false defence in the written statement to get undue benefit against the interest of the minor while she was representing the plaintiff as guardian, may be at best a remedy under Section 44 of the Evidence Act to maintain a separate suit saying it is not a *res judicata* that too it is the minor's suit once ended in dismissal from the lack of due diligence on the part of the next friend detrimental to the interest of the minor; however that is not an explanation for sufficient cause to make out to condone the delay, besides there are bereft of particulars as to when she could realize the fraud or undue influence and thereafter what is the explanation for any delay. In fact, it is to say in this context on the law which is very clear as also laid down by this Court in ***Cheedella Padmavathi (died) per LRs v. Cheedella Lakshminarasimha Rao (died) per LRs and others***^[1] particularly at para 12 (b) clauses (5) to (9) and in further particularly at clause (9) that there is no *obiter* or *estoppel* or waiver much less *res judicata* for a suit for partition between co-owners from the recurring cause of action, even the earlier suit was

withdrawn without permission of Court to maintain a subsequent suit for partition and for that conclusion reliance was placed on the expressions of the Madras High Court in ***Vearmachatteiar v. Kothapuduyar***^[2] and ***P.Paul James @ Palus v. P.Jesudsu Syri***^[3] among other. Having regard to the above, even from the pragmatic approach to adopt, when there are no grounds to interfere by sitting in revision against the impugned order of the lower Court dismissing the application to condone the delay under Section 5 of Limitation Act to entertain the application under Order IX Rule 9 CPC, the revision is liable to be dismissed, however, subject to above observations and with no costs.

Accordingly and subject to the observations above, the revision petition is dismissed with no costs.

Miscellaneous petitions pending in the revision petition, if any, stand closed.

Dr. B. SIVA SANKARA RAO, J

21st July, 2016.

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^[1] 2015 (5) ALT 634

^[2] AIR 1934 Madras 485

^[3] 1996 AIHC 1462 (Madras)