

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.4484 of 2016

ORDER:

This revision filed under Section 115 of Code of Civil Procedure, challenges the order dated 26.7.2016 passed by the Court of Senior Civil Judge, Dharmavaram, Ananthapur district in I.A.No.100 of 2016 in O.S.No.48 of 2013.

2. Heard Sri Maheswara Rao Kunchem, learned counsel for petitioner and Sri Ashwath Narayana for Respondents, apart from perusing the material available on record.

3. The petitioners herein are defendants 2 and 3 in the above suit. The respondents herein instituted the said suit for partition and separate possession of their share. The learned Senior Civil Judge passed ex parte preliminary decree on 2.1.2014. Praying to set aside the said ex parte decree, petitioners herein filed an application under the provisions of Order 9 Rule 13 of Code of Civil Procedure. Along with the said application, the petitioners herein also filed the present I.A.No.100 of 2016 under Section 5 of Limitation Act seeking to condone the delay of 785 days in filing Order 9 Rule 13 application. The learned Senior Civil Judge, Dharmavaram, by way of order dated 26.7.2016, dismissed the said application. The said order is under challenge in the present revision.

4. It is contended by the learned counsel for the petitioners that the order passed by the Court below is erroneous and contrary to law and is the result of failure to exercise jurisdiction vested in the Court below. It is further submitted that in view of ill-health and death of their father and mother, the application could not be filed within the time stipulated, as such, the learned Judge ought to have allowed the application. It is further submitted that the Court below ought to have adopted a liberal approach and ought not to have dismissed the application as substantial rights of the parties are involved in the matter.

5. On the contrary, it is argued by the learned counsel for the respondents that there is no illegality nor there exists any jurisdictional error in the order passed by the learned Senior Civil Judge and in the absence of the same, the questioned order is not amenable for any correction by this Court under Section 115 of CPC. It is further submitted by the learned counsel that since the petitioners herein failed to assign sufficient and proper reasons, Court below is perfectly justified in refusing to consider the request of the petitioners. It is further submitted that there is no proper explanation for the abnormal delay of 785 days in filing the application and in the absence of the same, the petitioners herein are not entitled for any indulgence of this Court under Section 115 of CPC.

6. In the above background, now the issue that emerges for consideration of this Court is – “whether the order under challenge is sustainable and tenable or whether the same warrants any interference of this Court under Section 115 of CPC?”

7. The information available before this Court discloses that the respondents herein instituted the suit, being O.S.No.48 of 2013, in the month of June, 2013. There is absolutely no controversy with regard to reality that the defendants 1 to 3 in the suit received summons in the month of August 2013 and they did not appear before the Court, as such, the defendants 1 and 2 were set exparte on 24.10.2013 and the 3rd defendant was set exparte on 30.12.2013. Thereafter, the learned Senior Civil Judge recorded the evidence adduced by the plaintiffs and decreed the suit exparte on 2.1.2014. There is also no dispute that the plaintiffs/respondents filed I.A.No.254 of 2015 under the provisions of Order 20 Rules 18 and 26 of CPC for passing of final decree in the month of November, 2014. It is also equally important to note that in the said application, the

petitioners herein received notices, but did not appear, as such, they were set *exparte* on 11.9.2015.

8. It is also equally important to note that subsequently I.A.No.21 of 2016 was filed by the plaintiffs to recognize the petitioners herein as legal heirs of deceased Defendant No.1 and on the said application also, notices were issued, but despite service of notices in the said application also, petitioners herein did not appear before the Court and they remained *exparte*. It is also significant to note that in the month of March, 2016, the Court below appointed an Advocate Commissioner.

9. The petitioners herein filed the instant application, as evident from the information available before this Court, on 26.3.2016. The case of the petitioners, as per the affidavit filed in support of I.A.No.100 of 2016 is that the 1st defendant suffered from paralysis and he was bedridden and taking treatment at St.John's Hospital, Bangalore and died on 5.1.2015 and their mother also died on 22.2.2015. It is further stated in the affidavit that the petitioners recently came to know about the *exparte* decree. In fact, the learned Senior Civil Judge, after perusing the medical bills and CT scan report produced by the petitioners, recorded a categorical finding that the father of the petitioners had undergone treatment from 14.7.2014 to 23.7.2014 and also recorded that the same would not reveal that the father of the petitioners was treated in the hospital since 24.10.2013 and subsequent to 23.7.2014. The learned Judge also observed that the petitioners failed to demonstrate the illness of their father during the period from 24.10.2013 to 14.7.2014. The learned Judge also noted the fact that the petitioners received the final decree notices on 13.8.2015, as such, they have the knowledge about the passing of preliminary decree. It is also required to be noted that the petitioners herein despite receipt of notices in the final decree proceedings on 13.8.2015, did not attend the Court and remained *exparte* and

no plausible explanation is forthcoming for the same. It is no doubt true that the Courts are required to consider the applications for condonation of delay in liberal manner, but the said principle cannot be stretched too far and applied to the cases of this nature where the applicants failed to show sufficient cause for condonation of delay. Therefore, in the facts and circumstances of the case, this Court has absolutely no scintilla of hesitation to hold that the order passed by the Court below does not warrant any interference of this Court under Section 115 of CPC.

10. For the aforesaid reasons, the C.R.P. is dismissed. As a sequel, the Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 4.11.2016
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A.V.SESHA SAI, J

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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4.11.2016