

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2668 OF 2012

ORDER:

This civil revision petition is filed under Section 115 of CPC challenging the order dated 30.3.2012 in I.A. No.270 of 2010 in I.A.No.918 of 2009 in A.S. No.63 of 2005 on the file of the Court of I Additional District Judge, Warangal.

2. Heard the learned counsel for both the parties.

3. The first respondent herein filed O.S. No.1036 of 2001 against the petitioner and second respondent herein, for partition of the suit schedule properties. After fullfledged trial, the suit was disposed of on 13.4.2005 with a finding that the first respondent herein is not entitled to any share in the property. Feeling aggrieved by the judgment and decree dated 13.4.2005 in O.S. No.1036 of 2001, the first respondent preferred A.S. No.63 of 2005. For one reason or the other, the appeal was dismissed for default. The first respondent filed I.A. No.918 of 2009 under Section 5 of Limitation Act to condone the delay of eight (8) days in filing I.A. No.919 of 2009 to restore the appeal. During the pendency of the appeal, second respondent, who is father of the first respondent and petitioner, died. The first respondent filed I.A. No.270 of 2010 under Section 5 of Limitation Act to condone the delay of 827 days in filing the L.R. petition. The court below, by impugned order dated 30.3.2012, allowed I.A.

No.270 of 2010. Aggrieved by the said order, the first respondent filed the present revision petition.

4. The petitioner and first respondent are the sons of the second respondent. The proposed L.Rs are none other than the sisters of the first respondent and petitioner. In a suit for partition, all the family members are necessary parties. As observed earlier, pending appeal, second respondent died; therefore, his daughters are proper and necessary parties for disposal of the appeal. A perusal of the record reveals that the first respondent changed the counsel. The record further reveals that the first respondent was in Mumbai for a long time. While considering the L.R. applications, the approach of the court shall be pragmatic and not pedantic. Taking all the facts into consideration more particularly the nature of the suit, the court below allowed I.A. No.270 of 2010 on payment of costs of Rs.2,000/- by the first respondent to the petitioner herein. Even if I.A.No.270 of 2010 is allowed, the same would not cause any prejudice to the rights of revision petitioner. The court below allowed I.A. No.270 of 2010 by assigning reasons much less cogent and valid reasons.

5. Having regard to the facts and circumstances of the case, this court is of considered view that the court below has rightly allowed I.A. No.270 of 2010 considering the nature of the suit and the interse relationship between the parties. While exercising the jurisdiction under Section 115 CPC, this

court cannot lightly interfere with the order passed by the trial court unless there is illegality or irregularity apparent on the face of the record. Viewed from factual or legal aspects, there is no illegality or irregularity in the order passed by the trial court.

5. Accordingly, the civil revision petition is dismissed. Miscellaneous petitions, if any pending in this revision petition, shall stand closed.

Date: 09.3.2017
YS

T.SUNIL CHOWDARY, J.

