

THE HON' BLE SRI JUSTICE M. S. K. JAISWAL

CRP.Nos. 414 & 419 OF 2017

COMMON ORDER:

These two Revision Petitions are filed by the petitioners/ plaintiffs, who filed O.S.No.27 of 2012 on the file of the learned I Additional District Judge, Srikakulam, for partition of suit schedule properties into three equal shares and for allotment of two shares to them.

2. In the suit notices on the respondents/ defendants were served and though they have appeared, they have not filed any written statement and consequently, they were set *ex parte* and the suit came to be decreed *ex parte*, passing a preliminary decree in favour of the petitioners/ plaintiffs. Thereafter, with a delay of 52 days, the respondents/ defendants filed I.A.No.101 of 2016 under Section 5 of the Limitation Act to condone the delay of 52 days in filing the application to set aside the *ex parte* decree dated 12.10.2012; and also filed I.A.No.185 of 2016 under Order IX, Rule 13 CPC to aside the *ex parte* preliminary decree, dated 12.10.2012. By the impugned order, dated 20.12.2016, the learned Additional District Judge allowed the applications. Aggrieved by the same, the present revision petitions are filed.

3. The contention of the petitioners/ plaintiffs is that though no valid reasons are given by the respondents herein in the applications to condone the delay and to set aside the *ex parte* decree, the trial Court, without taking into consideration the same, allowed the petitions and set aside the preliminary decree. It is further submitted that the respondents herein are trying to alienate the property so as to defeat the claims of the plaintiffs, who are the daughters of the 1st respondent/ defendant.

4. Perused the orders under challenge. In support of the applications filed in the Court below, the 1st defendant filed a sworn affidavit stating

that it is he, who is looking after the litigation, that though they have engaged an Advocate before the Court below, the said Advocate could not pursue the matter properly, and due to old age and living in a far place of West Godavari district, he could not pursue the matter, that since the suit is in between the father and the daughters, efforts are being made to compromise the matter, and hence the petitions could not be filed in time.

5. The learned Additional District Judge has taken into consideration the above circumstances, and allowed both the petitions. I do not find any reason to interfere with the said order, since I could not find any irregularity or illegality warranting interference. Since the suit is for partition of a valuable property, it is just and proper and in the interest of natural justice, an opportunity should be given to all the parties to contest the matter and cannot allow a decree of *ex parte*.

6. In that view of the matter, the revision petitions are liable to be dismissed. However, it is needless to say that in view of the apprehension of the petitioners that the respondents are trying to alienate the property, they are advised to avail other alternative remedies, as per law.

7. Accordingly, the revision petitions are dismissed. As a sequel, the miscellaneous applications pending, if any, shall stand closed.

Dt.20-03-2017
Kv

M. S. K. JAISWAL

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