

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.4759 and 4704 of 2011

COMMON ORDER :

These Civil Revision Petitions are filed by the petitioner/ plaintiff, aggrieved by the orders dated 20.07.2011 in I.A.No.385 of 2011 in S.R.No.2283 of 2008 of I.A.No....of 2008 in O.S.No.210 of 2004 and I.A.No.386 of 2011 in S.R.No.2282 of 2008 (of I.A.No....of 2008) in I.A.No.1058 of 2005 in O.S.No.210 of 2004 respectively passed by the learned Senior Civil Judge, Bhimavaram.

2. Notice sent to respondent No.7 returned as left and unclaimed, is a sufficient service, respondent Nos. 3 to 6 served failed to attend, respondent No.1 died even from the lower Court's orders, thereby, no direction to take any steps required. Heard the learned counsel for the petitioner, who is self same in both the revisions, no other than plaintiff in O.S.No.210 of 2004 on the file of the Senior Civil Judge, Bhimavaram of West Godavari District, maintained the suit against the sole defendant.

3. The 1st respondent since died after mortgage preliminary decree passed in the suit, respondent Nos.2 to 7 are shown as legal representatives of late respondent No.1, who is a sole

defendant supra. It is pursuant to the mortgage preliminary decree, a final decree application was filed in I.A.No.1058 of 2005, for the sole defendant did not comply with the liquidation of the mortgage decree debt within the period of redemption fixed and thereby, to extinguish the right of redemption and to bring the hypothecation to sell the said mortgage property for realization of the mortgage debt. It is during pendency of the said final decree application in I.A.No.1058 of 2005 as sole respondent (sole defendant) died intestate on 13.08.2005, which is subsequent to the filing of I.A.No.1058 of 2005 supra, on 02.08.2005, the matter was coming for taking steps to bring the legal representatives as respondents 2 to 7, it is for not taking such steps I.A.No.1058 of 2005 final decree application was dismissed for default on 23.02.2006.

4. The 2nd respondent is the husband and other respondents are the children of late 1st respondent, as can be seen from the record. A restoration application of the final decree application dismissed I.A.No.1058 of 2005 dismissed for default on 23.02.2006 shown filed on 10.03.2008, it was returned with office objection on 13.08.2008 (period within seven days) but it was not represented vide petition S.R.Nos.2282 and 2283 of 2008 with the restoration application under Order XXII Rule 3

C.P.C. and Rule 28 Civil Rules of Practice to add respondent Nos.2 to 7 as legal representatives of respondent No.1 to the said final decree application and the returned restoration application within seven days not represented and later with condonation delay of representation of 893 days by keeping I.A.No.8386 of 2011 application was filed along with I.A.Nos.385 and 386 of 2011. The lower Court's observation in dismissing the representation delay of 893 days for the cause shown misplaced in the office of the advocate of the record could not be traced till recent past in filing the application, that even respondents did not contest the petition and remained *ex parte*, the petition cannot be automatically allowed to condone the delay of 893 days in representation even out of the liberal approach which defeats the very vigour of law of limitation, thereby, there is no just ground. The said dismissal order is subject matter of the said revisions as referred supra, the respondents even served failed to attend and perused the material on record.

5. Once the affidavit petition is clear that there is a representation delay of 893 days occurred because the record is misplaced with the office of the advocate on record in the lower Court, the trial Court should have been adopted the

pragmatic approach in allowing the application, at best, with costs.

6. Having regard to the above, the delay in representation occurred of 893 days dismissed by the lower Court through the impugned orders, which are subject matter of the revisions are set aside by allowing the revisions, subject to costs of Rs.1,000/- (Rupees One thousand only) in each revision payable to the Superintendent of the lower Court within 15 days from the date of receipt of copy of this order and the Superintendent shall pay the same to the other side counsel if appears or else to pay to any District owned voluntary organization or orphanage. Any non-compliance of the said conditions, entitles dismissal of these revisions automatically without reference to this Court, by upholding the orders of the lower Court.

7. Accordingly, with the above conditions, the Civil Revision Petitions are allowed with costs.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed. No costs.

Dr. B. SIVA SANKARA RAO, J

Date:16-11-2017
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