

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.1129 of 2017

16.06.2017

Between:

Gompa Veera Venkata Satyanarayana

..Petitioner

and

T.Hari and others

..Respondents

Counsel for the petitioner: Mr.V.Subrahmanyam

Counsel for respondent Nos.1 and 2: Mr.M.Koteswara Rao
for Mr.N.Subba Rao

Counsel for respondent No.3: --

The Court made the following:



ORDER:

This civil revision petition arises out of order, dated 04.08.2016, in I.A.No.17 of 2015 in O.S.No.834 of 2005 on the file of II Additional Senior Civil Judge, Visakhapatnam.

2. I have heard Mr.V.Subrahmanyam, learned counsel for the petitioner, and Mr.M.Koteswara Rao, learned counsel representing Mr.N.Subba Rao, learned counsel for respondent Nos.1 and 2.

3. The petitioner filed the aforementioned suit for declaration of title and permanent injunction against the respondents. The said suit was decreed *ex parte* on 19.07.2006. As there was delay of 3,010 days in filing the application seeking to set aside the *ex parte* decree, respondent Nos. 1 and 2 filed I.A.No.17 of 2015 for condonation of such delay. The petitioner resisted the said I.A. by filing a counter-affidavit. However, by the order under revision, the Court below has condoned the delay.

4. At the hearing, it is not disputed by the learned counsel for the petitioner that personal summons were not served on the respondents in the suit and based on the substitute service by way of paper publication, the respondents were set *ex parte* and the *ex parte* decree was passed in the suit. In their affidavit filed in support of I.A.No.17 of 2015, respondent Nos.1 and 2 pleaded that the petitioner had earlier filed O.S.No.363 of 1994 in the Court of the Principal Senior Civil Judge, Visakhapatnam for injunction simplicitor against them; that the said suit was dismissed, after full trial, on 30.09.2002; that A.S.No.177 of 2002 filed by the petitioner was also dismissed by the VI Additional District Judge, Visakhapatnam, after hearing both sides, on 06.06.2005 and that S.A.No.1035 of 2005 filed by the petitioner was dismissed as not pressed

on 11.08.2014. Respondent Nos.1 and 2 also pleaded that as the decree was obtained behind their back, they were not aware of the same till 07.09.2014, when their watchman informed them through phone that there was an attempt to interfere with their possession and that thereupon, when they went to the suit schedule property on 08.09.2014, the petitioner informed them that he obtained *ex parte* decree for declaration of title and injunction. On consideration of the respective pleadings of the parties, the Court below has observed that since personal summons were not served, there was a possibility of respondent Nos. 1 and 2 not knowing about the passing of the *ex parte* decree; that no material was placed before it to show that respondent Nos.1 and 2 had such knowledge and that therefore, they are entitled to a fair opportunity of contesting the suit.

5. Admittedly, OS.No.834 of 2005 was pending, when the petitioner filed S.A.No.1035 of 2005. The petitioner has not disputed that when S.A.No.1035 of 2005 was sought to be not pressed, the fact of passing of the *ex parte* decree in the said suit was not brought to the notice of the Court or the counsel for respondent Nos.1 and 2. In the absence of any material adduced by the petitioner that respondent Nos.1 and 2 had knowledge of passing of the *ex parte* decree prior to 07.09.2014, it is reasonable to presume that they were not aware of such *ex parte* decree till 07.09.2014. In these facts of the case, the Court below has exercised its discretion in favour of respondent Nos.1 and 2 for setting aside the *ex parte* decree in order to give them a fair opportunity of contesting the suit on merits. Ordinarily, this Court, while exercising its revisional jurisdiction, would not interfere with the discretion exercised by the Courts below in the matter of condonation of delay unless such

exercise of discretion is wholly unreasonable and unconscionable. On the facts of the case, it cannot be said that such grounds exist for interference with the order of the Court below.

6. For the aforementioned reasons, I do not find any merit in this Civil Revision Petition and the same is, accordingly, dismissed.

7. As a sequel to dismissal of the C.R.P., C.R.P.M.P.No.1489 of 2017 filed by the petitioner for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

16th June, 2017
GHN

