

**THE HON'BLE SRI JUSTICE N.BALAYOGI**

**C.R.P. No.376 of 2016**

**ORDER:**

This revision under Section 115 of C.P.C. is filed being aggrieved by the orders dated 30.09.2015 in I.A.No.3722 of 2013 in ASSR.No.20069 of 2013 on the file of Principal District Judge, R.R.District at L.B.Nagar, Hyderabad.

2. The petitioner herein is the appellant before the Court below and plaintiff before the trial Court. The contention of the petitioner is that the lower appellate Court has committed grave error in dismissing the I.A., which is patently illegal and devoid of merits and on erroneous conclusions and that the reasons given in the order under revision are unsound and untenable under law.

3. It is further contended that the lower appellate Court wrongly concluded that the petitioner has not explained the satisfactory reason for filing the petition and that the petitioner failed to mention the nature of ill-health and name of the medical officer or the Hospital, where she was treated for the relevant period. While considering the application under Section 5 of the Limitation Act, the Court ought to have allowed the matter to be contested on merits rather than throwing it out on technicalities. It is further contended that the Court below failed to appreciate the fact that the delay caused in filing the petition is only on medical grounds.

4. The brief facts of the case is that the petitioner herein filed a suit in O.S.No.162 of 2005 before the Junior Civil Judge, Ibrahimpatnam, R.R.District seeking partition of the suit lands into

seven (7) equal shares and separate possession of one such share i.e. 1/7<sup>th</sup> to her by metes and bounds. It is contended that the father of the petitioner herein and the respondents 1 to 6 namely, Palcha Narayana purchased the suit lands from one Laxmana Chary from the joint nucleus funds and the name of Palcha Narayana was entered into revenue records as pattadar and possessor. The said Palcha Narayana died on 10.08.2000 and his wife also died subsequently in the year 2002. The marriage of the petitioner/plaintiff took place on 05.05.1993 and as such her rights are protected under Section 29-A of the Act. Whereas, the case of the defendants/respondents herein is that the suit schedule lands are self-acquired properties of their father Palcha Narayana. It is alleged that the plaintiff/petitioner herein has not contributed single paisa for purchase of the said property. The first defendant, his daughter-Kumari Rajitha and his brothers looked after said Palcha Narayana till his death and therefore, he executed a will dated 08.10.1998 by bequeathing the entire suit property in favour of defendants 1 to 3/respondents 1 to 3 herein.

5. On contest, the said suit was dismissed by the trial Court on 28.06.2013, against which, the plaintiff/petitioner herein preferred appeal in ASSR No.20069 of 2013 and as there is delay in preferring the appeal, he filed I.A.No.3722 of 2013 under Section 5 of the Limitation Act seeking to condone the delay of 115 days in filing the appeal. The defendants/respondents herein resisted the I.A. by filing counter.

6. In the affidavit filed in support of the petition, the reasons stated by the plaintiff/petitioner for the abnormal delay of 115 days

is that the suit was dismissed on 28.06.2013 and she made an application for certified copies of judgment and decree on 03.07.2013 and that the copy was made ready on 13.08.2013, but she could not file the appeal within 30 days and it was filed only on 26.12.2013 and numbered on 27.12.2013.

7. The reasons stated by the plaintiff/petitioner for the delay is that she could not contact her counsel on record as she was ill-health in the month of July, 2013 and completely confined to bed. Thereafter in the last week of November, 2013, she contacted her counsel on record and expressed her willingness to prefer an appeal. As the certified copy of the judgment and decree was mixed up with the other case bundles, the same could not be traced out immediately, and were traced very recently and in the process, the said delay occurred in preferring the appeal.

8. From the above, it is clear that the suit was dismissed on 28.06.2013, that the petitioner applied for certified copies of judgment and decree on 03.07.2013, and that the documents were made ready by 13.08.2013. It is pleaded that in the month of July, 2013, the plaintiff/petitioner herein was completely bed-ridden. If the plaintiff/petitioner herein was really bed-ridden in the month of July, 2013, she must be out of any ill-ness from August, 2013 onwards. But as per her own averments, she contacted her counsel only in the month of November, 2013. The other reason offered by the petitioner is that the record was mixed up with other bundles in the counsel's office and immediately, after tracing out the same, the present appeal is preferred. Even the other reason of mixing up the bundle with the other records of the counsel is not

supported by the affidavit by either the pleader's clerk or the counsel. Further according to the petitioner, she fell ill in the month of July, 2013, but there is no reason or explanation from the petitioner as to what prevented her from the month of August to November, 2013 from contacting her counsel in filing the appeal. When the plaintiff/petitioner took the plea of ill-health and bed-ridden, certainly, the same should have been supported by any medical certificate, if really she has taken treatment under a doctor. There is no mention regarding this aspect in the affidavit filed before the lower appellate Court.

9. The lower appellate Court considered the plea of the plaintiff/petitioner and also the respondents in the counter, wherein they have specifically took a plea that the petitioner herein failed to mention the nature of ill-health with which she alleged to have suffered during the relevant period and also not filed any medical record to show that she was not well at the relevant time for giving instructions to her counsel and she has to explain the day-to-day delay. Having considered the above, the lower appellate Court rightly pointed out that by the date of obtaining certified copies of judgment and decree on 13.08.2013, she was not well and she was sick in the month of July, 2013 but not in the month of August, 2013. Absolutely, the plaintiff/petitioner has not filed any medical record in proof of her ill-health. She also failed to mention the nature of ill-health and name of the doctor or the hospital where she took treatment during the said period.

10. When there is a delay of 115 days in preferring the appeal, necessarily, it is the duty of the petitioner herein to explain the

sufficient cause for such abnormal delay though not able to explain the day-to-day delay. The ill-health and the treatment said to be undergone by the petitioner is not supported by any medical record and the other reason of mixing up the records with the other records of the counsel is also not supported by any supporting affidavit either by the counsel or his clerk. Thus the petitioner herein failed to explain the sufficient cause for condoning the abnormal delay of 115 days in preferring the appeal and that the lower appellate Court well considered the material on record and rightly dismissed I.A.No.3722 of 2013 in ASSR No.20069 of 2013 and the said order does not suffer from any infirmities warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed while confirming the order dated 30.09.2015 in dismissing I.A.No.3722 of 2013 in ASSR No.20069 of 2013 on the file of Principal District Judge, R.R.District at L.B.Nagar. No order as to costs.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

26<sup>th</sup> April, 2018

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