

THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.A.NO.1 OF 2018 IN SECOND APPEAL NO.245 OF 2018

AND

SECOND APPEAL NO.245 OF 2018

COMMON ORDER

The unsuccessful plaintiff in O.S.No.511 of 2006 on the file of the learned VII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, is in second appeal, aggrieved by the judgment and decree dated 27.01.2015 passed by the learned V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, in A.S.No.45 of 2001, confirming the dismissal of the suit by the trial Court, *vide* judgment and decree dated 30.09.2010. However, the presentation of this second appeal is with a delay of 981 days. I.A.No.1 of 2018 was therefore filed by the appellant-plaintiff seeking condonation of the said delay.

Heard Sri A.Venkatesh, learned counsel for the appellant-plaintiff, and Sri R.Prakash, learned counsel for the seventh respondent-seventh defendant. Despite service of notice, the other respondents-defendants did not choose to enter appearance before this Court.

O.S.No.511 of 2006 was filed for partition and separate possession by the appellant-plaintiff in relation to the agricultural land admeasuring Acres 2-09 guntas in Sy.Nos.64, 76, 77 and 78 of Katedan Village, Rajendranagar Mandal, Ranga Reddy District. The trial Court dismissed the suit holding that the appellant-plaintiff failed to establish that the suit schedule properly was an ancestral joint family property and her entitlement to seek partition thereof. In appeal, the first appellate Court concurred with the conclusion arrived at by the trial Court and confirmed the dismissal of the suit. This was by a judgment passed as long back as in January, 2015. The present second appeal was filed only on 09.02.2018.

I.A.No.1 of 2018 seeks condonation of the delay of 981 days in its presentation. In the affidavit filed in support this I.A., the appellant-plaintiff stated that the delay was neither willful nor wanton but was due to the fact that she was suffering from Tuberculosis and recovered only in December, 2017. She stated that the judgment and decree of the first appellate Court was made ready on 10.03.2015, but since March, 2015, she was suffering from Tuberculosis. She further stated that after recovery, she contacted her counsel in January, 2018, collected all the papers for filing the second appeal and proceeded to do so in the first week of February, 2018.

Significantly, she did not produce any medical certificate or other documentation in support of her claim that she was suffering from Tuberculosis. Further, Sri A.Venkatesh, learned counsel, does not dispute the fact that Tuberculosis is not so debilitating that it would completely handicap the appellant-plaintiff from going about her necessary functions. Therefore, even if the appellant-plaintiff's claim is accepted, it can hardly constitute sufficient cause for her admitted reticence from March, 2015 to January, 2018. It is well settled that a party cannot sleep over his or her rights and thereafter seek to revive the litigation to the detriment of the other side who would presume that it has attained a quietus owing to no further appeal being filed. This Court therefore finds neither just nor sufficient cause to condone the enormous delay of 981 days in the presentation of this appeal.

I.A.No.1 of 2018 is accordingly dismissed. In consequence, S.A.No.245 of 2018 stands dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

10th AUGUST, 2018
PGS