

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

I.A.No.1/2018 in S.A.No.219/2018

&

SECOND APPEAL No.219 of 2018

DATE: 31-08-2018

Between:

Smt.Pilla Appalanarasamma (died)
and 3 others

..... PETITIONERS/APELLANTS

AND

Adduri Rama Rao and 2 others

.....RESPONDENTS

COUNSEL FOR THE PETITIONERS: Sri G.L.NAGESWAR RAO

COUNSEL FOR RESPONDENTS : --

THE COURT MADE THE FOLLOWING:



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

I.A.No.1/ 2018 in S.A.No.219/ 2018

&

SECOND APPEAL No.219 of 2018

ORDER:

I.A.No.1 of 2018 is filed seeking condonation of delay of 381 days in preferring the second appeal.

The second appeal is filed against the concurrent findings recorded by the Courts below in judgment and decree dated 26.08.2016 in A.S.No.103 of 2009 on the file of the learned IV Additional District Judge, Visakhapatnam, whereby he has confirmed the judgment and decree, dated 27.09.2007, in O.S.No.347 of 1999 on the file of the learned IV Additional Senior Civil Judge, Visakhapatnam.

The brief facts leading to the filing of the second appeal are that one Aduri Mutyalamma, the mother of the plaintiff, defendants Nos.1 and 3, was the original owner of the suit schedule property. As she had no children, she and her husband Ramulu adopted defendant No.2. Thereafter, the plaintiff and defendants Nos.1 and 3 were born to them. In the year 1986, Ramulu executed a Will in favour of defendant No.2 and also in favour of the wife of defendant No.1. There does not appear to be any dispute that in pursuance of the said Will, defendant No.2 constructed a house on the property conveyed through the Will. However, in the year 1999, respondent No.1 filed O.S.No.347/1999 seeking partition of the plaint schedule property into two equal shares and allotment of one such share to him and defendant No.1, his brother. The trial court, while finding that as the property belonged to Mutyalamma, her husband

Ramulu had no right to execute the Will in favour of defendant No.2, and that therefore, the plaintiff and the three defendants are entitled to equal shares. Accordingly, a preliminary decree for partition of the property into four equal shares and allotment of one such share to the plaintiff and the three defendants was passed.

Feeling aggrieved by the said judgment and decree, defendant No.2 filed A.S.No.103/2009. During the pendency of the said appeal, defendant No.2 died and appellants Nos.2 to 4 have come on record in her place. Vide Judgment, dated 26.08.2016, the lower appellate court has dismissed the appeal.

The fact that Aduri Mutyalamma was the owner of the property is not in dispute. Therefore, the findings of the Courts below that Ramulu, the husband of Mutyalamma had no right to execute the Will in favour of defendant No.2 and wife of defendant No.1 are not liable to be interfered with. Hence, I do not find any substantial question of law for adjudication in this second appeal.

The learned counsel for the appellants has submitted that as respondent No.1 has filed the suit nearly 13 years after execution of the Will, his client has constructed a house and that allotment of 1/4th share in the house causes undue hardship to the appellants.

In my opinion, as what is challenged in the second appeal is only preliminary decree, the appellants are entitled to raise all the legally permissible pleas in the final decree proceedings. It is needless to observe that the trial court will work out equities while allotting shares to the respective parties under the final decree.

In the light of the above observations, I do not find any reason for condoning the delay of 381 days in filing the second appeal. Hence, I.A.No.1 of 2018 is dismissed.

As a sequel to dismissal of I.A.No.1/2018, the second appeal is rejected, subject to the observations made hereinabove. No order as to costs.

C.V.NAGARJUNA REDDY,J

Date: 31.08.2018
Dsr

