

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.1223 of 2018

ORDER:

The petitioners are appellants in un-numbered appeal arising out of the judgment and decree, dated 09.11.2011, in O.S.No.150 of 2009 passed by the Senior Civil Judge, Kovur. The petitioners are defendants 3 and 4 in the said suit. The aforesaid suit was filed for partition of plaint schedule property and to allot 2/3rd share and also for separate possession. The petitioners herein adopted the written statement filed by the 2nd defendant in the suit. After considering the oral and documentary evidence on record, the Court below decreed the aforesaid suit on 09.11.2011. Against the said judgment and decree, they filed appeal. Along with the appeal, they also filed I.A.No.684 of 2015 seeking to condone the delay of 1358 days in filing the appeal. When the said application was dismissed by an order, dated 04.01.2018, the present Civil Revision Petition is filed.

2. This Court carefully perused the affidavit filed in support of the application and noticed that no reason was given for the abnormal delay in filing the appeal, except stating as follows:

“Due to my ill health I could not meet my Advocate and file the appeal within the stipulated time. There is no willful delay or neglect. Substantial rights are involved in the suit affecting my right in the plaint schedule property. I therefore pray that the Hon'ble Court may be pleased to condone the delay of 1358 days in filing this appeal. Otherwise we will be put to serious loss and injury. I therefore prays for orders accordingly.”

3. A counter-affidavit was filed by respondents 2 to 4, 6, 14 and 17, which reads thus:

“It is further submitted that the suit was decreed on 09.11.2011. Copy application in C.A.No.1875/2011 was filed on 24.12.2011, C.A made on 17.01.2012 and first appeal in CF.No.2299/12 was already filed by these petitioners/appellants on 12.03.2012. I.A.No.412/2012 condoning the delay of 60 days was filed and the said application was dismissed for default on 11.06.2012. Again another application was filed for restoration of the above I.A.No.412/2012 in I.A.No.889/2012 on 11.07.2012 in CF 5804/2012 and the said application was also dismissed for default on 07.09.2012. Again another application for restoration of I.A.No.889/2012 was filed in I.A.No.1150/2012 in CF No.8086/2012 and the same also was dismissed for default on 20.04.2015. In this application to condone delay averments based on merits of the case have no place. The delay is in-excusable. Further all the three I.As were filed by Mekala Sampooramma and Tirupathaiah together with Sk.Bhukari Saheb who was originally shown as a party to the suit from whom the present appellants have purchased the property, in respect of third application, IA.No.1150/2012 dated 01.10.2012 the petitioners managed to report eternally not ready and ultimately on 20.04.2015 after a lapse of 30 months have managed and secured a dismissal.”

4. In those circumstances, the lower appellate Court dismissed the application.

5. It appears from the record that the petitioners and respondent No.8 filed I.A.No.412 of 2012 to condone the delay of 60 days in filing the appeal and the same was dismissed for default on 11.06.2012 for non-prosecution. They filed I.A.No.889 of 2012 to restore the order, dated 11.06.2012, was also dismissed for default on 07.09.2012. Thereafter, they filed another I.A.No.1150 of 2012 to restore I.A.No.889 of 2012 and it was also dismissed on

20.04.2015. The petitioners suppressed filing of said applications and filed the present application. The lower appellate Court noticed all these facts and dismissed the petition with costs.

6. In the circumstances, this Court sees no ground to entertain the present Civil Revision Petition and accordingly, the Civil Revision Petition is dismissed with costs of Rs.1,000/- (Rupees one thousand only) payable to the plaintiffs in O.S.No.150 of 2009 on the file of Senior Civil Judge, Kovur.

Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

MARCH 19, 2018
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A.RAMALINGESWARA RAO, J



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Date:19.03.2018

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