

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4170 of 2017

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order dated 13.07.2017 passed in I.A.No.1538 of 2016 in O.S.No.76 of 2012 on the file of the Court of the Principal District Judge, Nalgonda.

2 Heard the learned counsel for both sides.

3 A perusal of the record reveals that the respondent Nos.1 to 3 have filed O.S.No.76 of 2012 on the file of the Court of the Principal District Judge, Nalgonda against the petitioner and respondent Nos.4 and 5 herein for partition of the suit schedule property. For one reason or the other, the petitioner did not file written statement before the trial court. The trial court, having no other alternative, set the petitioner ex parte by order dated 31.01.2014 and passed preliminary decree. On coming to know about the passing of the preliminary decree, the petitioner filed I.A.No.1538 of 2016 under Section 5 of the Limitation Act, to condone the delay of 1004 days in filing the petition to set aside the ex parte judgment and decree dated 31.01.2014. The trial court, after affording reasonable opportunity to both parties, dismissed the said petition. Hence the present Civil Revision Petition.

4 Heard the learned counsel for both parties.

5 Respondent Nos.1 to 3 are daughters and the petitioner and respondent Nos.4 and 5 are sons of late Sayanna. The suit schedule property originally belongs to said Sayanna. After death of Sayanna, the respondent Nos.1 to 3 filed the suit against their brothers for

partition of the suit schedule property. It is the case of the petitioner that by reposing confidence in the son of 4th defendant, he entrusted the matter to them. It is the case of the petitioner that the respondent Nos.4 and 5 have not properly prosecuted the matter, therefore, the trial court passed the ex parte decree.

6 The petitioner made several allegations against some of the family members. If the petition is dismissed, it may not be possible for the petitioner to ventilate his legitimate or legal grievance. Even if the petition is allowed, the same would not cause any prejudice to the respondent Nos.1 to 3, who are plaintiffs. To put it in a different way, even if the petition is allowed, the same will not deprive the legal rights of the respondent Nos.1 to 3. Ultimately, the Court has to decide whether the plaintiffs are entitled for partition of the suit schedule property or not. The trial court has not considered the inter se relation between the parties and dismissed the petition on technicalities. While disposing of petitions of this nature, the approach of the court shall be pragmatic but not pedantic. If the impugned order is allowed to stand, it may cause untold hardship and effect the legal rights of the petitioner. At the time of arguments, the learned counsel for the petitioner submitted that the petitioner filed his written statement before the trial Court.

7 Taking into consideration the inter se relation between the parties, this court is of the considered view that it is a fit case to allow the revision, but by imposing some costs.

8 Accordingly, this Civil Revision Petition is allowed setting aside the order dated 13.07.2017 passed in I.A.No.1538 of 2016 in

O.S.No.76 of 2012 on the file of the Court of the Principal District Judge, Nalgonda. Consequently I.A.No.1538 of 2016 is allowed condoning the delay of 1004 days in filing the petition to set aside the *ex parte* decree dated 31.01.2014 passed in O.S.No.76 of 2012 on condition of the petitioner herein depositing Rs.12,000/- (Rupees Twelve Thousand only) to the credit of the suit, before the trial Court, on or before 07.09.2018. Consequently, the *ex parte* judgment and decree dated 31.01.2014 in O.S.No.76 of 2012 is also set aside. On such deposit, the respondent Nos.1 to 3 herein i.e. plaintiff Nos.1 to 3 are entitled to withdraw the same equally, without furnishing any security. The trial court is hereby directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. No order as to costs. As a sequel, miscellaneous petitions if any pending in this Civil Revision Petition shall stand closed.

Date: August 28, 2018
Kvsn

T.SUNIL CHOWDARY, J