

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.3402 of 2018

ORDER:

In this Civil Revision Petition, docket order, dated 12.04.2018 passed by the learned Principal Senior Civil Judge, Kurnool, in I.A.No.1401 of 2017 in C.F.R.No.4662 of 2017 in O.S.No._____ of 2017, is challenged.

On 22.06.2018, this Court ordered notice to the respondents including personal service.

On 10.07.2018, learned counsel for the petitioner filed a memo to the effect that respondents 1 and 3 refused to receive the notices, respondent No.4 received the same and notice sent to respondent No.2 is not yet returned served. In view of the same, it can be said that respondents 1 and 3 are deemed to be served. Though notice is not served on one of the respondents, considering the nature of the case, this Court deserves to take up the same for disposal at the threshold.

Petitioner herein filed a plaint before the Court below for partition and delivery of separate possession of 1/9th share to her in the suit schedule properties. At the stage of numbering the

plaint, certain objections were raised and time was granted for complying with the same. However, she failed to re-present the same. Thereafter, she filed the aforesaid I.A. for condonation of delay of 141 days in re-presenting the plaint. In support of the said I.A., an affidavit sworn to by her advocate was filed by specifically stating that the papers in the present case got mixed up with other papers in his Office and in the process, they had lost track of and on discovering the same, they filed such I.A. for condonation of delay in re-presenting them. The Court below merely stating that the said reason is not satisfactory, passed the impugned docket order dismissing the said I.A.

It is to be noted that as on the date of passing of the impugned docket order, the suit is yet to be numbered and that there being no limitation for the suits filed for partition of the ancestral properties. Merely because the petitioner has failed to re-present the papers within the stipulated time, her rights cannot be abrogated. In view of the same, the delay in re-presenting the papers would not have caused any prejudice to the defendants as they are yet to be served. Therefore, it can be said that the impugned order dismissing the I.A. filed for

condonation of delay in re-presenting the plaint papers is not tenable.

In those circumstances, this Civil Revision Petition is allowed by setting aside the impugned docket order and by directing the Court below to allow the I.A. by imposing costs and accept the plaint and number the same.

Miscellaneous Petitions, if any pending, shall stand disposed of. There shall be no order as to costs.

14th NOVEMBER, 2018.

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CHALLA KODANDA RAM, J

