

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.4056 of 2018

ORDER:

1) Heard learned counsel for the petitioner. Though a notice was served on the 2nd respondent, which is placed on record through postal track consignment, there is no representation on his behalf. Since the suit is of the year 2004 and the dispute between the parties being very narrow, the present Civil Revision Petition is disposed of after hearing the learned counsel for the petitioner and perusing the record.

2) Assailing the docket order dated 14.06.2018, passed in I.A.No.185 of 2013 in O.S.No.85 of 2004 on the file of the Senior Civil Judge, Peddapuram, wherein an application filed to condone the delay of 838 days in filing the L.R. application to add legal heirs of deceased 5th defendant was dismissed, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

3) Originally O.S.No.85 of 2004 came to be filed by the petitioners/plaintiffs to declare the plaintiffs as actual owners and consequently direct the defendants to deliver possession of the schedule properties. Pending suit, the 1st defendant died and defendants 4 to 6 were added as legal representatives in the year 2008. Later on the plaintiffs' evidence was completed and the matter was coming up for defendants' evidence. The averments in the affidavit filed in support of the petition would show that on

07.02.2013 a memo was filed by the counsel for the defendants stating that 5th defendant died on 31.07.2010. It is said that the plaintiffs came to know about the death of the 5th defendants only on filing memo by the counsel for the defendants. On enquiries the plaintiffs came to know that the 5th defendant died leaving his wife and sons as his legal representatives. Hence, the plaintiffs filed an application seeking to condone the delay of 838 days in filing the L.R application. The said application came to be filed on 10.02.2013.

4) A counter came to be filed disputing the averments made in the affidavit. It is said that though they filed a memo before the Court below, the plaintiffs failed to take steps to bring the legal representatives of the 5th defendants on record.

5) After considering the rival submissions, the trial Court dismissed the said petition. Assailing the same, the present Civil Revision Petition came to be filed.

6) As seen from the record, the impugned order came to be dismissed on the ground that though the defendants filed a memo informing the death of the 5th defendant on 31.07.2010 but the plaintiffs failed to add the legal representatives of the 5th defendant within time and later filed the present application with delay of 838 days. Since the petitioners failed to explain day to day delay, the trial Court dismissed the application.

7) A perusal of the order impugned would show that the death of 5th defendants was on 31.07.2010 and on the same day a memo

was said to have been filed by the defendants informing the death of the 5th defendant which in my view appears to be quite improbable. When the death was on 31.07.2010 the question of filing a memo on the very same day informing about the death of 5th defendant would not arise. Further in the counter, the defendants do not any way say that they informed the Court about the death of the 5th defendant on the same day ie., on the date of death of the 5th defendant itself. On the otherhand, an application came to be filed on 10.02.2013 stating that on 07.02.2013 only the counsel for the defendants filed a memo before the trial Court stating that the 5th defendant died on 31.07.2010. No documents are filed showing filing of memo on 07.02.2013.

8) In view of the above, the order under challenge is set aside and the matter is remanded back to the trial Court to find out as to whether the memo was filed on 07.02.2013 or on 31.07.2010 and then decide the issue in accordance with law.

9) Accordingly, the Civil Revision Petition is disposed of.

10) There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

10.08.2018
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