

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.4360 of 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the order dated 22.06.2018 passed in I.A.No.21 of 2017 in I.A.No.144 of 2010 in O.S.No.1416 of 1997 on the file of the Court of Additional Judge-cum-VI Senior Civil Judge, City Small Causes Courts, Hyderabad.

2. Heard the learned counsel for the petitioner and perused the record.

3. A perusal of the record reveals that the respondents 1 and 2 filed O.S.No.1416 of 1997 on the file of the Court of II Additional Judge, City Civil Court, Hyderabad against the petitioner for partition of the suit schedule property. After full-fledged trial, the trial Court dismissed the suit. Feeling aggrieved by the decree and judgment in O.S.No.1416 of 1997, respondents 1 and 2 preferred C.C.C.A.No.173 of 2001. The appellate Court set aside the decree and judgment in O.S.No.1416 of 1997 and allowed the appeal on 28.04.2010. The petitioner preferred SLP (Civil) No.17321 of 2010 on the file of the Hon'ble Supreme Court and the same was dismissed. Thereafter, respondents 1 and 2 filed I.A.No.144 of 2010 for passing of final decree. The trial Court dismissed I.A.No.144 of 2010 for non-prosecution. The respondents

filed an application seeking to set aside the order in I.A.No.144 of 2010. As there was delay, respondents filed I.A.No.21 of 2017 under Section 5 of Limitation Act to condone the delay of 171 days in filing the restoration petition. The trial Court after affording a reasonable opportunity to both parties allowed the petition. Hence, the revision.

4. A perusal of the record reveals that the petitioner and respondents belong to same family. It is not in dispute the suit was decreed in favour of the respondents by passing preliminary decree. During pendency of the final decree proceedings, the respondents filed I.A.No.144 of 2010. A perusal of the affidavit shows that due to health conditions, the respondents could not appear before the trial Court. The affidavit filed by the respondents discloses the cause much less valid cause for their non appearance before the trial Court. If the petition is dismissed, it may not be possible for the respondents to ventilate their legal grievances. Even if the petition is allowed, the same may not cause any prejudice to the rights of the petitioner. Ultimately, the Court has to pass final decree. I am of the considered view that the Court below after considering the facts and circumstances of the case, rightly allowed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial court.

There is no illegality, irregularity or impropriety in the order of the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the civil revision petition lacks merits and *bona fides* and the same is liable to be dismissed.

5. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

1st August 2018
Rns

T.SUNIL CHOWDARY, J

