

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.521 of 2019

ORDER :

This Revision is filed challenging the order dt.13-11-2018 in I.A.No.743 of 2016 in O.S.No.2048 of 2008 of the VII Senior Civil Judge, City Civil Court, Hyderabad.

2. Petitioner herein is 3rd defendant in the said suit.
3. The said suit was filed by respondent Nos.1 and 2 against petitioner and other defendants for partition of the suit schedule property.
4. The suit was decreed *ex parte* on 04-11-2009 holding that 1st respondent is entitled to 6/48th share, the 2nd respondent is entitled to 7/48th share, petitioner and two other defendants are entitled to 7/48th share and 3rd respondent was entitled to 14/48th share.
5. Alleging that she did not know about the said suit at all and she came to know about the *ex parte* decree only on 08-02-2016 through the written statement filed in O.S.No.495 of 2015 pending before the I Senior Civil Judge, City Civil Court, Hyderabad, petitioner, filed I.A.No.743 of 2016 to condone the delay of 2479 days in filing petition to set aside the *ex parte* decree dt.04-11-2009 in O.S.No.2048 of 2008.

6. In the affidavit filed in support of the said application, she further stated that her siblings, who were parties in O.S.No.2048 of 2008, had misguided her in 2008 and took her signatures on plain vakalat, but did not inform her that the said vakalat will be filed in O.S.No.2048 of 2008 and got filed in the suit. She contended that she was a handicapped person, unable to move freely on her own and was dependent on her husband. She contended that on 08-03-2016, after going through the written statement filed by 3rd respondent in O.S.No.495 of 2015, her counsel told about the decree in O.S.No.2048 of 2008 and then she filed this application with delay of 196 days. She contended that she became owner of the suit schedule property by way of oral gift made by her father on 01-01-1973 and she had executed a gift deed in favour of her husband on 29-04-2007 of the same property and she had no reasons to keep quiet and not contest O.S.No.2048 of 2008.

7. Counter-affidavit was filed by respondent Nos.3 to 5 opposing this application. They contended that the allegations made by petitioner are false and that there is deliberate delay of 2479 days and the said period of delay cannot be condoned.

8. By order dt.13-11-2018, the Court below dismissed the said application. It held that since petitioner signed on vakalat which was filed in O.S.No.2048 of 2008, it has to be presumed that she has got knowledge about the filing of the suit for partition by her siblings. It is for her to enquire about the proceedings of the case. It also held

that petitioner had not contended that her husband was not present at the time when she signed on vakalat or that he was unaware of the facts and therefore her silence for 6½ years before filing the present application cannot be condoned.

9. Assailing the same, this Revision is filed.

10. Though learned counsel for petitioner contended that petitioner is a handicapped person and also filed a photograph of the petitioner, admittedly, petitioner's one eye is working and she is capable of putting her signature and she admitted that she did put her signature on the vakalat which was filed in O.S.No.2048 of 2008. Since the petitioner is staying with her husband, it is presumed that her husband is also aware of the petitioner's signing the same. Therefore petitioner cannot say that she had no knowledge about the filing of O.S.No.2048 of 2008. It is for her and her husband to defend themselves by contesting the suit after filing of written statement within time and the petitioner can only blame herself for not taking steps to defend the suit. 6½ years after the suit was decreed, petitioner cannot suddenly make allegations about the alleged fraud played by her siblings and the said pleas cannot be accepted.

11. I therefore do not find any error of jurisdiction in the order passed by the Court below refusing to condone the delay of 2479 days in filing application to set aside the *ex parte* decree in O.S.No.2048 of 2008.

12. Accordingly the Civil Revision Petition fails and it is dismissed at the admission stage. No costs.

13. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-06-2019

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