

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.482 of 2017

ORDER :

Heard both sides.

2. This Civil Revision Petition is filed by the petitioner under Article 227 of the Constitution of India challenging the order dt.20.09.2016 passed in I.A.No.66 of 2016 in O.S.No.1339 of 2008 on the file of Additional Junior Civil Judge, Kukatpally, at Miyapur, Ranga Reddy District.

3. The petitioner herein is the 7th defendant in the above suit.

4. The said suit was filed by respondent nos.1 to 6 against petitioner and respondent nos.7 to 15 for partition of the plaint Schedule property as O.S.No.2185 of 2006 on 21.06.2006 before the Principal Junior Civil Judge, Ranga Reddy District which was then transferred to the Court of the Additional Junior Civil Judge, Kukatpally, at Miyapur, Ranga Reddy District, and renumbered as O.S.No.1339 of 2008.

5. Initially, an *ex parte* decree was passed by the Trial Court on 17.04.2012 after noting that the Court had ordered summons to defendant nos.1 to 10 and all of them remained *ex parte*.

6. After a period of (1103) days, on 25.01.2016, the petitioner / 7th defendant filed I.A.no.66 of 2016 under Section 5 of the Limitation Act, 1963 to condone the delay of (1103) days in filing the petition to

set aside the *ex parte* preliminary decree dt.17.04.2012 along with an application under Order IX Rule 13 of Civil Procedure Code, 1908.

7. Nowhere in the said affidavit did the petitioner contend that he did not receive summons in the suit though he mentioned that the suit was posted to 02.02.2007 for his appearance, and he was set *ex parte* on the ground of his non-appearance. Moreover, more than once in the affidavit it is alleged that the plaintiffs deliberately avoided serving notices to him.

8. Other contentions on merits of the suit claim were also raised.

9. Counter-affidavit was filed by the plaintiffs / respondent nos.1 to 6 opposing the said application. It was specifically alleged that the petitioner / 7th defendant received summons at the preliminary stage of the suit and was also well aware of the suit proceedings; and that pending suit, he sold the property to one Iqbal Ali Khan. It is contended that the petitioner colluded with the other defendants and all of them were watching the proceedings in the suit and kept silent, and at the stage when application for final decree was filed, they wanted to create hurdles. It was also pointed out that the purchaser, viz., Iqbal Ali Khan filed an application to implead him in the suit which was dismissed. It was contended that no sufficient cause has been shown for condoning the inordinate delay of (1103) days in filing the petition to set aside the *ex parte* decree.

10. By order dt.20.09.2016, the Court below dismissed the said application stating that Ameen report available in its record was perused by it and it indicated that summons were duly served on the petitioner, but he did not appear; and so, he was set *ex parte* on 02.02.2007; and ultimately, preliminary decree was passed on 17.04.2012.

11. Assailing the same, the present Civil Revision Petition is filed.

12. The counsel for petitioner contended that the finding of the Court below that summons were received by petitioner is not correct; that plaintiffs have managed to get the summons served on a wrong person; and petitioner came to know subsequently through his vendee, and then filed I.A.No.64 of 2016.

13. The counsel for respondent refuted the said contentions, and supported the order passed by the Court below.

14. In order to test the correctness of the plea of petitioner, this Court has summoned the record from the lower Court relating to service of summons on petitioner in the Trial Court during the pendency of the suit. But the lower Court has informed this Court that the summons copy of petitioner / 7th defendant is not found in the case bundle.

15. It is not in dispute that Court Ameen's report would be written on the reverse of summons copy, and the Trial Court in its order dt.20.09.2016 had referred to the Ameen's report specifically which

stated that summons were served on petitioner. It is obvious that subsequently the summons copy as well as the Ameen's report on its reverse were removed by somebody. Be that as it may, when the petitioner has not pleaded in I.A.No.66 of 2016 that he had not received summons in the suit and the pleading in the I.A. is only that plaintiffs deliberately avoided serving notices on petitioner, it is not open to the petitioner to contend in this Revision that he did not receive summons in the suit.

16. It is not in dispute that plaintiff pays process fee for the service of summons on the defendant in the suit, and he does not directly serve any notices either in person or through Registered Post Acknowledgment Due (R.P.A.D.) on the defendants, unless so permitted by the Court. It is not as if the counsel for petitioner, who appeared in the Court below, was unaware of this fact. Therefore, the plea taken by petitioner that plaintiffs / respondent nos.1 to 6 deliberately avoided serving notices on petitioner has to be ignored in the absence of a specific plea that summons were not received by petitioner.

17. Therefore, I do not find any error of jurisdiction in the order passed by the Court below refusing to condone the delay of (1103) days in filing the application under Order IX Rule 13 C.P.C.

18. Accordingly, the Civil Revision Petition fails and it is dismissed. No order as to costs.

19. The Registry is directed to transmit the record secured from the Trial Court back to the Trial Court.

20. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07.03.2019

Ndr/*

