

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.4691 of 2014

O R D E R :

This Civil Revision Petition is filed under Section 115 of C.P.C., challenging the order dt.26.11.2014 in I.A.No.1772 of 2008 in I.A.No.662 of 2006 in O.S.No.783 of 2001 passed by the Principal Junior Civil Judge, Ranga Reddy District.

Petitioners are the legal heirs of the deceased-plaintiff in the suit O.S.No.783 of 2001.

The deceased-plaintiff has filed the said suit against respondent Nos.1 to 3 herein/defendants for perpetual injunction restraining them from interfering with her possession and enjoyment over the suit schedule property.

The said suit was dismissed for default on 03.02.2006. During her life time, the deceased-plaintiff filed I.A.No.662 of 2006 in O.S.No.783 of 2001 to restore the suit. While the said application was pending, the sole plaintiff died on 28.04.2007 leaving behind the petitioners herein as her legal heirs.

I.A.No.1772 of 2008 was filed in I.A.No.662 of 2006 under Section 5 of the Limitation Act, 1963 to condone the delay of 125 days in filing application to set aside the abatement of I.A.No.662 of 2006, which occurred on 31.08.2007.

The said I.A.No.1772 of 2008 was dismissed on 20.04.2009 by the Court below.

Challenging the said order dt.20.04.2009 in I.A.No.1772 of 2008, C.R.P.No.2904 of 2009 was filed before this Court. The said Revision was allowed on 01.11.2012 and the matter was remanded to the Court below to consider afresh by giving permission to the petitioners to file original medical record relating to petitioner No.1, who was alleged to be unwell.

By the time C.R.P.No.2904 of 2009 was disposed of, the original record pertaining to I.A.No.1772 of 2008 and I.A.No.662 of 2006 got destroyed by the orders of the District Court in the process of destroying of old records.

Thereafter, the petitioners filed I.A.No.781 of 2014 in O.S.No.783 of 2001 to reconstruct the records in I.A.No.1772 of 2008 and I.A.No.662 of 2006 and the said I.A.No.781 of 2014 was allowed on 05.11.2014 and record in I.A.No.1772 of 2008 and I.A.No.662 of 2006 were accordingly reconstructed.

Thereafter, the Court below again passed the impugned order on 26.11.2014 dismissing I.A.No.1772 of 2008 in I.A.No.662 of 2006 and refused to condone the delay of 125 days in filing application to set aside abatement. The Court below referred to the medical record pertaining to petitioner No.1, which showed that on 19.07.2007, petitioner No.1 was admitted in hospital, and on 24.07.2007, he was discharged. The application to bring on

record the legal representatives was filed on 01.08.2007 and the same was returned on 10.08.2007. It observed that there is no evidence that on those dates, petitioner No.1 was in need of medical care or admitted in hospital. It also observed that petitioner No.1 filed another suit relating to the same Survey numbers against the same defendants seeking the relief of perpetual injunction and the schedule property in the present suit is part and parcel of the schedule property in the other suit. It further observed that in an injunction suit, cause of action shown on the date of filing against the existing parties will only subsist, and the relief of injunction being equitable and personal, it will not devolve upon the legal representatives on the death of either of the parties. It also observed that the cause of action in an injunction suit would abate on the death of the sole plaintiff and would not devolve upon the legal representatives, unlike in other suits.

Assailing the said order dt.26.11.2014 in I.A.No.1772 of 2008 in I.A.No.662 of 2006, this Civil Revision Petition is filed.

In this Revision, respondent Nos.2 and 3 have been served. Pending the Revision, respondent No.1 had died and his legal representatives were brought on record as respondent Nos.4 to 10. Notices sent to the said legal representatives were served.

I have heard learned counsel for the petitioners.

Admittedly, the suit O.S.No.783 of 2001 was dismissed for default on 03.02.2006 and thereafter I.A.No.662 of 2006 was filed by the sole plaintiff herself to restore the said suit. When the said I.A.No.662 of 2006 was pending, she died on 28.04.2007, leaving the petitioners herein as her legal heirs. The view of the Court below that the cause of action in a suit for injunction does not survive to the legal heirs of the sole plaintiff cannot be sustained, since under Section 306 of the Indian Succession Act, 1925, cause of action would survive in all the suits, except in the suits for defamation or assault or other personal injuries.

Admittedly, application to bring on record the legal representatives of the deceased plaintiff was filed on 01.08.2007 and though there is a slight delay in filing the said application, since it is stated that the said delay occurred on account of illness of petitioner No.1, the Court below, keeping in mind that substantial stakes are involved in the suit, ought to have allowed the application on payment of costs and proceeded with the matter. Admittedly, the medical record of petitioner No.1 shows that he suffered from heart problem and had been admitted in hospital on 19.07.2007 and was discharged on 24.07.2007 and the application to bring on record the legal representatives had been filed on 01.08.2007, shortly thereafter. Merely because the said application was returned on 10.08.2007 and there was a delay in representing the said application, the petitioners cannot be blamed for it, because it is the counsel who receives the

returned application from the Section of the Court below and has to represent it after complying with the objections raised. Therefore, the impugned order dt.26.11.2014 is liable to be set aside.

Accordingly, the Civil Revision Petition is allowed. The order dt.26.11.2014 in I.A.No.1772 of 2008 in I.A.No.662 of 2006 in O.S.No.783 of 2001 passed by the learned Principal Junior Civil Judge, Ranga Reddy District, is set aside; and the said I.A.No.1772 of 2008 is allowed condoning the delay of 125 days in filing application to set aside the order dt.31.08.2007 dismissing I.A.No.662 of 2006. The Court below is directed to proceed with the matter to decide I.A.No.662 of 2006, after hearing both sides expeditiously. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

12.04.2019.
Msr

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