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Court : Karnataka

Decided On : Jul-27-1955

Reported in : AIR1955Kant133; AIR1955Mys133

Judge : Venkataramaiya, C.J.

Acts : Limitation Act, 1908 - Sections 3 and 5; Code of Civil Procedure (CPC), 1908 - Order 9

Appeal No. : Second Appeal No. 212 of 1953

Appellant : Devaralinga Gowda and anr.

Respondent : Puttaswamy Gowda and ors.

Advocate for Def. : M. Ramaswamy, Adv.

Advocate for Pet/Ap. : A.R. Somanath Iyer, Adv.

Judgement :

1. The question to be considered is whether the appellants who are minors are disentitled to disposal of the appeal filed in the Court of the District Judge on merits as there was delay in filing it. The delay is undisputed and considerable. If the appellants were adults, I would have readily upheld the order, of the learned District Judge refusing to condone it. The appellants are children below the age of ten. They were impleaded as sons and legal representatives of Rame Gowda who

died while the suit was pending in the trial Court and their mother was appointed as their guardian ad litem. The subject-matter of the suit was a garden valued at more than Rs. 3000 purchased by Rame Gowda from the father of the plaintiffs, The sale was impeached by the plaintiffs and their contention that the sale did not affect their shares in the property was allowed. It was against this decision that the appeal was filed by the widow of Rame Gowda on behalf of her sons.

2. The reason alleged for the delay is that she is an ignorant and illiterate woman, that she was depending upon Rame Gowda's father for the conduct of the litigation, that the father-in-law fell ill and owing to the illness the appeal could not be filed in time. She and her father-in-law both filed affidavits in support of this and a medical certificate was produced. Both have given evidence. The explanation offered has been disbelieved and found to be unsatisfactory with the result the application for the delay being excused and the appeal are both dismissed.

3. Sri Somanath Iyer learned counsel for appellants argued that considerations which ordinarily apply to laches of adults cannot be pressed against minors, that the dilatoriness of the guardian should be viewed with sympathy and indulgence as she is an illiterate woman, the heavy court-fee paid for the appeal is prima facie proof of her bona fides and earnestness and that having regard to the value of the property involved, the appeal should at least on terms be heard and decided, Sri Ramaswamy learned counsel for the respondent-plaintiffs objected to this on the ground that the right vested in respondents by the bar of limitation should not be taken away, that the order against the appellants is one passed in the exercise of discretion not liable to be interfered with, that the delay is enormous and not accounted for.

In addition, he urged that the paternal uncles of the minors interested in the property have not challenged the decree of the trial Court passed against them and the minors and this is a circumstance against relaxing the rule of limitation normally applied. The case in -- 'Babu Ganesh v. Sitaram Martand', A I R 1916 Bom 153 (A) was relied upon for this. The facts arc somewhat different as in that case the two legal representatives who filed the appeal were not both minors. One was a major and besides him another adult was interested in the property. In this

case both the appellants are minors and it is not clear whether the adult uncles are interested in the property as they are alleged in the plaint only to be persons cultivating the land.

4.There is no doubt that one of the conditions necessary to be satisfied by a party who seeks relief|is that he should apply for it within the time prescribed by law and that the omission to do so gives the party from whom the relief is claimed a vested right not to be called upon to answer the claim. It is also recognised that though the Court has a discretion under the Limitation Act to excuse delay in the initiation of certain proceedings, the discretion cannot be exercised arbitrarily or rightly in favour of a party unless he shows good or sufficient cause for it. What is sufficient cause depends on the particular facts of each case and cannot be defined for general application.

5. It is, however, necessary to bear in mind that when the delay affects the minors the penalty imposed is vicarious as the person in default is not the sufferer but the consequence of default is inflicted on the minors. For this reason Courts arc less rigid in enforcing the bar of limitation and somewhat liberal in exercising power to condone delay when interests of minors are involved. This does not mean that such cases arc exempt from the operation of law of limitation but does indicate the need to make a difference in considering delay which affects minors and adults.

So far back as 1860, the Judicial Committee in 'Ranee Birjobutty v. Partaub Singh,' 8 Moo Ind App 160 (B) emphasised it and this Court has in 42 Mys HCR 91 (C), applied it in proceedings tinder Order 9, Civil P.C. Sri Ramaswamy contended that this view is possible for proceedings relating to a suit and not to an appeal. On principle it is difficult to appreciate the distinction sought to be made between suit and appeal as applications under Order 9, Civil P.C., arc filed like appeals only after suits are disposed of, the point of dissimilarity being the forum.

6. Apart from this it has to be noticed that the vested right acquired by respondents-plaintiffs as a result of the appeal not being filed within time is liable to be questioned. So, the dismissal of the appeal on the score of delay may for the present serve to terminate the litigation but may provide a ground for multiplying it by affording room for starting another suit to challenge the finality of the decision in

the suit in respondents' favour as being due to the gross negligence of the guardian in not taking timely steps.

7. The explanation put forward for the delay is not quite convincing and this is partly because of the unsatisfactory manner in which the affidavits are drafted. The affidavit of the guardian bears the date 14-10-52 and the same date appears to have been written in the vakalat. There is a recital in the affidavit that the appeal was filed on that date, and representation to the same effect in the trial Court, but as a matter of fact it was filed only on 11-11-1952. The guardian of the minors is an illiterate woman of a village and had to depend on others for making arrangements to file the appeal. A reference to the affidavits suggests that the appeal was ready and intended to be filed much earlier than the day on which these reached the Court. The admission of the appeal does not entail examination of witnesses or anything more than a hearing of counsel on behalf of the parties to decide it on merits. Considering all this and the substantial value of the property involved, I think that the case is one in which the delay may be condoned.

8. The appeal is, therefore, allowed and the order of the lower Court on I. A. I. in the appeal filed there is set aside. The appeal will be heard and disposed of according to law early by the learned District Judge but a sum of Rs. 100 as costs irrespective of the-ultimate result will be paid to respondents-plaintiffs by appellants or their guardian before the appeal is heard and within the time fixed by the lower Court.

9. Appeal allowed.

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