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Court : Andhra Pradesh

Decided On : Nov-05-1998

Reported in : 1999(2)ALD79; 1999(1)ALT144

Judge : Krishna Saran Shrivastav. J.

Acts : [Limitation Act, 1963](#) - Sections 5; [Code of Civil Procedure \(CPC\), 1908](#) - Order 9, Rules 9 and 13

Appeal No. : CRP No. 3375 of 1998

Appellant : Pathipaka Govardhan and Others

Respondent : Pathipaka Anandam and Others

Advocate for Pet/Ap. : Mr. V.V. Ramana Rao, Adv.

Judgement :

ORDER

1. This revision is preferred against the order passed by the District Munsif, Sircilla in IA No.370 of 1997 in OS No.177 of 1995, whereby the application under Section 5 of the Limitation Act for condonation of delay of 210 days in filing the application under Order 9 Rule 13 CPC has been dismissed.

2. The respondent No.1 had filed the suit for partition against the petitioners as also against the respondent Nos.2 to 4 in OS No.177 of 1995. The petitioners 5, 6 and

7 are minors. The trial Court in IA No. 161 of 1995 had appointed the 4th petitioner as guardian ad litem of the petitioners 5, 6 and 7 who are defendant Nos.5, 6 and 7 in that suit. Ex parte preliminary decree has been passed on 13-2-1997.

3. The petitioners had filed IA No.370 of 1997 for condonation of delay of 210 days in filing the application for setting aside the ex parte decree.

4. It is alleged that the first petitioner suffered from Jaundice and Typhoid from 10-2-1997 to 7-9-1997, while the remaining petitioners had proceeded on a pilgrimage on 5-2-1997 and had returned on 7-9-1997. On returning they came to know that ex parte preliminary decree for partition has been passed on 13-2-1997. They requested, under those circumstances, to condone the delay. The application was resisted by the 1st respondent/plaintiff.

5. The lower Court disbelieved the say of the first petitioner that he suffered from Jaundice and Typhoid from 10-2-1997 to 7-9-1997 on the ground that the certificate filed in support of the allegation had not been proved because Dr. Satyanarayana Reddy was not examined. The lower Court also did not believe the say of the remaining petitioners that they had gone on pilgrimage for 210 days because according to the lower Court pilgrimage for such a long time does not appear to be a genuine pilgrimage.

6. This order has been challenged in this revision. Notice before admission was given to the first respondent.

7. Having heard the learned Counsel of the both sides, I am inclined to dispose of the revision on merits considering the short question of law involved in this case.

8. Relying on a decision in Satyanarayana v. Krishna Murthy, : AIR 1961 AP446 , it has been urged on behalf of the first respondent that due to laches and default on behalf of the guardian ad litem of the minors, the ex parte decree merely on this ground cannot be set aside.

9. In the case of Yenkataramayya v. Prakasa Rao, 1955 ALT 287 = 1955 An.WR 368 = AIR 1957 AP 293, it is held that:

'When the Court is satisfied that the guardian had neglected his duty to his ward, it is incumbent upon the Court to protect the interests of the minor from the consequences of such negligence.'

10. In Satyanarayana's case (supra) the next friend of the minor had sought adjournment after a adjournment and under those circumstances the Division Bench of this Court has held that in every case in which a suit is dismissed for the laches of the next friend, it cannot be said that there is sufficient cause for the restoration of the suit within the meaning of Order 9 Rule 9. It has further observed that, where a suit is dismissed due to the negligence or default of the next friend, the Court should record the circumstances under which the suit is dismissed so that it may not preclude the possibility of another next friend filing the suit or the minor himself filing a suit after he attains majority.

11. The lower Court has not rejected the claim of the petitioners 5 to 7 on the ground that their guardian ad litem had sought adjournment after adjournment for filing the written statement. The lower Court has rejected the claim of the petitioners only on the ground that going on pilgrimage for a period of 210 days does not appear to be true.

12. In Satyanarayana's case (supra), as noted above, the Court has observed that right of the minors has to be protected either by giving them right to file a suit on attaining majority or permitting them to file a suit through another next friend. Such benefit cannot be granted to a minor who is a defendant in the suit. Therefore, the only way to protect the interests of the minor defendant is to give him a right to contest the suit where the guardian ad litem becomes negligent in defending the suit.

13. When the matter was taken up, the minor petitioners 5 to 7 along with 4th petitioner had gone on pilgrimage and she did not take interest in contesting the suit, no fault can be found out with the minors and their right to defend the suit cannot be taken away.

14. For the foregoing reasons relying on the case of Venkataramayya's case (supra) 1 set aside the impugned order because the interest of the minors has to

be protected and the impugned order being joint and several it cannot be set aside in part.

15. In the result the impugned order is set aside and the lower Court is directed to register the application for setting aside the ex parte preliminary decree and decide the same on merits in the light of the observations made above.

16. The Civil Revision Petition is accordingly disposed of. No costs.

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