

B. Krishna Murthy Vs. B. Vishnu Murthy and ors.

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Court : Andhra Pradesh

Decided On : Nov-13-2000

Reported in : 2001(1)ALT270

Judge : N.Y. Hanumanthappa, A.C.J. and ;Ghulam Mohammed, J.

Acts : [Limitation Act, 1963](#) - Sections 5 and 14

Appeal No. : C.M.P. No. 11439 of 2000 in CCCA (SR) No. 45583/2000

Appellant : B. Krishna Murthy

Respondent : B. Vishnu Murthy and ors.

Advocate for Def. : J. Vijayalakshmi and ;K. Anup Kumar, Advs. for Respondent No. 1

Advocate for Pet/Ap. : T. Seshagiri Rao, Adv.

Disposition : Petition dismissed

Judgement :

Ghulam Mohammed, J.

1. This C.M.P. is filed under Sections 5 and 14 of the Limitation Act for condonation of delay of 1636 days in filing the appeal against the final decree dated 13-9-1995 in I.A. No. 678 of 94 in O.S. No. 170 of 1973.

2. An affidavit is filed by the petitioner stating that first respondent filed O.S. No. 170 of 1973 for partition of joint family properties and for separate possession of his share. By order dated 9-10-1980 Court decreed the suit and held that items 1 to 4 of the Plaint A schedule properties are joint family properties and that first respondent is entitled for half share and further held that items B and C schedule properties are not joint family properties and dismissed the suit in respect of the same.

3. Aggrieved by the same, the petitioner herein filed C.C.C.A. No. 107 of 1981 and fifth respondent filed CCCA No. 171 of 1981 in this Court and both the appeals were clubbed and disposed of by a common judgment dated 23-8-1989 confirming the judgment of the Trial Court in regard to items 1 to 3 and setting aside the judgment in regard to item No. 4 of the suit schedule property.

4. Aggrieved by the above judgment, the first respondent filed L.P.A. No. 350 of 1989, the fifth respondent filed L.P.A. No. 425 of 1989, and petitioner filed L.P.A. No. 30 of 1990. It is further stated that by order dated 9-3-1994, this Court allowed L.P.A. No. 350 of 1989 filed by the first respondent confirming the judgment of the Trial Court and dismissed the appeals filed by petitioner and fifth respondent.

5. It is further stated that pending disposal of CCCA No. 107 of 1981 the first respondent filed I.A. No. 139 of 1981 for passing a final decree wherein a Commissioner was appointed and filed his report dated 3-9-1986. It is further stated that the said I.A. was dismissed for default on 27-11-1991 and the report of the Commissioner filed in I.A. No. 139 of 1981 was made part of the record in I.A. No. 678 of 1994 and final decree was passed on 13-9-1995 determining the rights and share of the parties in terms of the decree.

6. Thereupon, the petitioner filed, I.A. No. 621 of 1996 to set aside the order dated 13-9-1995 passed in I.A. No. 678 of 1994 and the same was dismissed by order dated 24-2-1998. Aggrieved by the same, the petitioner filed C.M.A.2845 of 1998 and the same was dismissed by order dated 10-11-1998. Against the order in appeal, the petitioner filed L.P.A. No. 68 of 2000 and the Division Bench of this Court vide order dated 6-6-2000 held that the petitioner/ appellant did not appear despite service of notice and declined to interfere with the impugned order and

dismissed the same at admission stage, permitting the appellant to question the final decree with a petition to condone the delay, if necessary.

7. It is further stated in the affidavit that the final decree is not legal and valid and that the trial Court ought not to have relied upon the report of the Commissioner filed in I.A. No. 139 of 1981 as the same is not admissible as evidence in I.A. No. 678 of 1994. It is further stated that the petitioner filed his objections to the report of the Commissioner in I.A. No. 139 of 1981 and it is alleged that without considering the same, the final decree has been passed in I.A. No. 678 of 1994. It is further stated that the report of the Commissioner is not a substantive evidence and the same cannot be relied upon. It is further stated that the allotment of the eastern portion of the land in Sy No. 1092/B to the extent of Ac. 4-00 out of Ac.8-00 of item No. 4 of the plaint A schedule property is not correct and that a direction to deliver vacant possession of 400 Sq. yards consisting of rooms and other structures to the first respondent in the eastern portion of Ac.4-00 in Sy. No. 1092/B in Kukatpally and a direction to recover a sum of Rs. 50,975/- towards profits is also not correct.

8. It is further stated by the petitioner that he is diligently prosecuting the final decree proceedings dated 13-9-1995 even upto the stage of L.P.A. and submitted that the period spent in prosecuting be excluded for computing the period of limitation and to condone the delay caused in filing the appeal.

9. The first respondent filed counter-affidavit stating that there are no bona fides in the application filed as the petitioner is aware of all the proceedings, filed the present petition with a mala fide intention to protract the litigation so as to deprive the fruits of the decree made on 9-10-1980 and the final decree dated 13-9-1995. It is further stated that the conduct of the petitioner in knowing fully well about the final decree and having lost in almost all the Courts, the present application to condone the delay is to be dismissed. It is further stated that even the mere technical ground raised about non-service of notice was ultimately found to be not correct by the Division Bench of this Court, thus the petitioner has not shown sufficient cause to condone inordinate and unexplained delay and submitted that the same has to be viewed with great care and caution as the petitioner

approached the Court with unclean hands.

10. Learned Counsel for petitioner Mr. T. Seshagiri Rao contended that the delay caused in filing the appeal is neither intentional nor wanton and that the same occurred because the petitioner was pursuing the remedy upto the level of L.P.A and that the time spent towards this litigation has to be excluded in terms of Section 14 of the Limitation Act and drawn our attention to the judgment of Supreme Court in Nanbat Ram Sharma v. Additional District Judge II, Moradabad, AIR 1987 SC 1352 wherein the Supreme Court held that Courts should adopt liberal approach while condoning the delay under Section 5 of the Limitation Act. He has also drawn our attention to the judgment of Apex Court in Ram Bhawan Singh v. Jagdish, : [1990]3SCR957 wherein it is held that 'Once High Court finally decided an issue in Writ Petition quashing orders of appellate and revisional authorities and restoring that of Consolidation Officer, initiation of a fresh proceeding before the consolidation authorities on ground of wrong advice rendered by Counsel, held, not in good faith and hence Section 14 not attracted.

11. He has further drawn our attention to a Division Bench judgment of this Court in Jokam Reddy v. Gokar Mallaiah, 1976 ALT 275 = 1977 (2) An.W.R. 442 wherein this Court held as follows:

'Reading Sections 14 and 5 of the Limitation Act, the best that can be spelled out of the two provisions is that when Section 14 does not in terms, apply to any particular proceeding, the fact that the aggrieved party bona fide prosecuted Thai proceeding may be considered in the circumstances of each case as a sufficient cause for the delay. Consideration of bona fides or due diligence are always material and relevant when the Court is dealing with applications made under Section 14 of the Limitation Act. In dealing with such application the Court is called upon to consider the effect of the combined provisions of Sections 5 and 14.'

12. The learned Counsel for petitioner further drawn our attention to a judgment of this Court in Chekuri Ramachandra Raju v. Pathapati Satyanarayana Raju, 1963 (1) An.W.R. 387.

13. There is no dispute with regard to the propositions laid down in the above said decisions, but we are of the opinion that they are not relevant to the facts and circumstances of the case on hand.

14. On the other hand, the learned Counsel for respondent Smt. J.Vijaya-lakshmi drawn our attention to the conduct of the petitioner and submitted that the petitioner is not entitled to claim the relief of condonation of delay as a matter of right, inasmuch as the petitioner was aware of the final decree proceedings and kept quite and has not filed any regular appeals and was dragging on the matter on mere technical ground of non-service of notice, with a view to deprive the decreeholder of his right to avail the fruits of the decree. It is further submitted that no indulgence can be shown to the petitioner as he has not shown any cause much less sufficient cause to condone the inordinate and unexplained delay of 1636 days and that the petitioner cannot be given the protection under Section 14 of the Limitation Act. In support of the above contentions, the learned Counsel for respondent has drawn our attention to the judgment of Delhi High Court in Babu Ram v. Devinder Mohan Kaura, AIR 1981 Del. 14 a judgment of Madras High Court in Gnanadurai v. Suseelammal, : AIR1995 Mad133 and a Judgment of this Court in Transworld Shipping Services India Pvt. Ltd. v. Harvan Investment and Trading Pvt. Ltd., : AIR 1989 AP255 wherein it is held that 'Extension for period of limitation under Section 5 of Limitation Act can be granted, where the reasons for delay, satisfy the Court. Mere filing an application for condonation of delay would not be sufficient.'

15. The Apex Court in Ramlal, Motilal and Chotelal v. Rewa Coalfields Limited, 1961 (2) SCJ 556 held that in construing Section 5 of Limitation Act, two considerations are relevant. The first is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decreeholder to treat the decree as binding. The other consideration which cannot be ignored is that if sufficient cause for excusing the delay is shown discretion is given to the Court to condone delay and admit the appeal. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. At that stage diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary

power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. The effect of the Explanation is that if the party who has applied for extension of period shows that the delay was due to any of the facts mentioned in the Explanation that would be treated as sufficient cause; the question may then arise whether discretion should be exercised in favour of the party or not.

16. Considering the conduct of the petitioner and in the facts and circumstances of the case, we are of the view that the petitioner is not entitled to the protection under Section 14 of the Limitation Act, since he was not pursuing the remedy in good faith. Considering the above conduct of the petitioner and the inordinate and unexplained delay without showing a cause much less a sufficient cause, we decline to exercise our discretion vested on us to condone the delay of 1636 days in filing the appeal.

17. In result, the Civil Miscellaneous Petition is dismissed. No costs.

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