

Nelapolu Pulla Rao and anr. Vs. Nelapolu Pulla Rao and 2 ors.

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SooperKanoon Citation : sooperkanoon.com/445034

Court : Andhra Pradesh

Decided On : Jul-18-2001

Reported in : 2001(4)ALT600

Judge : B. Subhashan Reddy and ;P. Sankara Narayana, JJ.

Acts : [Limitation Act, 1963](#) - Sections 5, 14 and 14(2); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21 - Order 23, Rules 3A - Order 32, Rule 7

Appeal No. : L.P.A. No. 205/2001

Appellant : Nelapolu Pulla Rao and anr.

Respondent : Nelapolu Pulla Rao and 2 ors.

Advocate for Def. : S. Suryaprakasa Rao, Adv.

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

Disposition : Appeal dismissed

Judgement :

ORDER

P.S. Narayana, J.

1. This letters patent appeal is directed against an order of the learned single Judge, made in CMP No. 16027 of 2000 in A.S.SR No. 55206 of 2000 dated

22.11.2000.

2. The appellants are the petitioners-appellants in CMP No. 16027 of 2000 in A.S.SR No. 55206 of 2000. The appellants filed an application for condoning the delay of 3490 days in filing the appeal. The facts in brief are as follows:

3. Respondent No.1 herein filed O.S. No. 156 of 1989 on the file of the learned Subordinate Judge, Kovvur for the relief of partition and the said suit was decreed in terms of compromise. The mother of the appellants filed another suit - O.S.No. 73 of 1991 - challenging the compromise decree on behalf of the minor sons and the said suit was dismissed on the ground that such suit cannot be maintained in view of the bar imposed by Order XXIII Rule 3A CPC. In the light of these events, appellants filed an appeal with an application to condone the delay of 3490 days against the compromise decree passed in O.S. No. 156 of 1989, averring that the delay was due to the events stated supra and hence in the interest of justice delay has to be condoned.

4. The respondents resisted the application stating that there are no bona fides on the part of the appellants and in fact they have been enjoying the properties which fell to their share in pursuance of the compromise decree.

5. After hearing the elaborate submissions of both the parties, the learned single Judge had dismissed the application observing:

'Admittedly the mother of the petitioners filed the suit O.S. No. 73 of 1991, which was dismissed on 31.3.2000 on the ground that the suit itself was not maintainable as there is a blanket prohibition under Rule 3A of Order XXIII CPC and the only course that was left open to the petitioners was either to file a petition under proviso to Order XXIII Rule 3A CPC or a regular appeal under Section 96(1) of CPC, as observed by the Supreme Court in the decision cited (4) supra. Therefore, by filing a suit, which was prohibited under the Act, the petitioners cannot claim that the delay is required to be condoned on the ground that they have been prosecuting the matter in a wrong Forum. The very filing of the suit itself was prohibited. Section 14 of the Limitation Act would not apply in this case, as admittedly it cannot be presumed that the prosecution was bona fide. Further,

the statute itself prohibited filing of the suit and even if the suit is filed it would not fall within the provisions of Sec. 14 of the Limitation Act. Moreover, in the instant case, as rightly contended by the learned counsel for the respondents, the partition had taken place in the year 1990 in pursuance of the decree passed in O.S.No. 156 of 1989 and the parties have been enjoying their respective properties and the matter is settled. By virtue of the present petition, it cannot be allowed to unsettle the settled situation, which would re-erupt disputes in a family which has settled its properties long back'.

6. Aggrieved by the said order of the learned single Judge, the present L.P.A. is filed.

7. Sri Durga Prasada Rao, learned counsel representing the appellants, had contended that the appellants had been prosecuting the litigation bona fide and hence by virtue of Section 14 of the Limitation Act the period can be excluded and the delay can be condoned. The learned counsel had taken us through several facts involved in the matter which may not be relevant for the purpose of deciding the present appeal. The learned counsel also contended that in view of Order XXXII Rule 7 CPC, since the appellants were minors and inasmuch as the compromise was not certified to be to the benefit of the minors, the very compromise is illegal. We do not think that at this distant point of time this aspect can be gone into while deciding the application for condonation of delay.

8. Sri S. Surya Prakasa Rao, learned counsel representing the respondents, had contended that the suit filed by the mother was dismissed as not maintainable in view of the bar imposed by Order XXIII Rule 3A CPC. Further, the learned counsel for the respondents also contended that the appellants had attained majority long back and having procrastinated the litigation now at this stage they cannot turn round and say that they had been prosecuting the litigation bona fide in a wrong court and they cannot take advantage of the benefit under Section 14 of the Limitation Act 1963. In fact, even before the learned single Judge, both the learned counsel had relied upon certain decisions and also contentions had been raised that the delay can be condoned either under Section 5 of the Limitation Act 1963 or under Section 14 of the Limitation Act 1963 in view of the facts and

circumstances of the case.

9. Section 5 of the Limitation Act 1963, dealing with the extension of the prescribed period in certain cases, reads as follows:

'Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period'.

10. Hence, the existence of the sufficient cause is an essential condition for condoning the delay in presentation of any appeal or application other than an application under any of the provisions of Order XXI CPC. In *Kichulippa v. Ramanujam*¹, their Lordships of the Madras High Court while dealing with the expression 'sufficient cause' were pleased to observe as follows:

'sufficient cause is evidently something more than legal limitation for if any case fell within these rules, it would be governed thereby in the case of suits and there would be no scope for the application of Section 5. Sufficient cause seems to mean not only those circumstances such as the Court being closed or time being spent in obtaining copies or the party being a minor or insane which the law expressly recognizes as extending the time but also such circumstances as are not expressly recognized but which may appear to the Court to be reasonable looking to all the facts of the case'.

11. It is no doubt true that the expression 'sufficient cause' is to be liberally construed so as to advance substantial justice and no negligence nor inaction or want of bona fides is imputable to the petitioners seeking condonation of delay.

12. Section 14 of the Limitation Act 1963 dealing with exclusion of time of proceeding bona fide in Court without jurisdiction, reads as follows:

'(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision against the defendant shall be

excluded, where the proceeding relates to the same matter in issue and is prosecuted in good-faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good-faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2, Order XXIII of the Code of Civil Procedure, 1908, the provisions of sub-section (21) shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of defect in the jurisdiction of the Court or other cause of a like nature'.

13. In *India Electric Works Limited v. James Matosh*², the apex Court was pleased to observe as follows:

'It is well settled that although all questions of limitation must be decided by the provisions of the Act and the courts cannot travel beyond them the words 'or other cause of a like nature' must be construed liberally. Some clue is furnished with regard to the intention of the legislature by the Explanation III in S. 14(2). Before the enactment of the Act in 1908 there was a conflict amongst the High Courts on the question whether misjoinder and nonjoinder were defects which were covered by the words 'or other cause of a like nature'. It was to set at rest this conflict that Explanation III was added. An extended meaning was thus given to these words. Strictly speaking, misjoinder or nonjoinder of parties could hardly be regarded as a defect of jurisdiction or something similar or analogous to it'.

14. In *C. Basu v. Chief Justice, High Court, Calcutta*³, it was observed that the construction of bona fides or due diligence are always material and relevant and the Court while dealing with an application under Section 14 of the Limitation Act, is called upon to consider the effect of the combined provisions of Section 5 and

Section 14 of the Limitation Act 1963. In *Tirumala Reddy v. State of A.P.*⁴ it was observed that for the purpose of excluding time it must be a civil proceeding and it should have been prosecuted bona fide and with due diligence and where it is a suit it must relate to the same matter in issue and where it is an application it must be for the same relief. In *Venkatachari v Arunachalam Pillai*⁵, the Madras High Court while dealing with the essential conditions for the purpose of applying the benefit under Section 14 of the Limitation Act 1963, observed:

'In order to attract Section 14 of the Limitation Act, three conditions have to co-exist: (a) the plaintiff must have been prosecuting the other civil proceeding which he relies upon with due diligence; (b) the earlier proceeding and the later proceeding must be founded on the same cause of action; and (c) the former proceeding must have been prosecuted in good faith in a Court which from defect of jurisdiction or other cause of like nature is unable to entertain it. If the three conditions are satisfied the plaintiffs would be entitled to exclude the time taken by the former proceeding in computing the period of limitation'.

15. In the light of the foregoing discussion, we are of the opinion that the explanation given for condonation of inordinate delay of 3490 days is not convincing and further the cause explained either does not fall under the expression 'sufficient cause' within the meaning of Section 5 of the Limitation Act 1963 or, under Section 14 of the Limitation Act 1963.

16. For the foregoing reasons, we are of the opinion that there are no bona fides on the part of the appellants in preferring the appeal at this distant point of time with an inordinate delay of 3490 days. In view of what is stated supra, we do not find any infirmity in the order passed by the learned single Judge. The L.P.A. is thus dismissed.