M.Ravi Vs. Devagi and ors.

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Court : Chennai

Decided On : Jun-25-2012

Judge : G.Rajasuria, J.

Acts : Code of Civil Procedure,(CPC) 1908 - Section 115, Order 9 Rule 13

Appeal No. : C.R.P.(NPD) No.1467 of 2012 and M.P.No.1 of 2012

Appellant : M.Ravi

Respondent : Devagi and ors.

Advocate for Def. : Mr.A.Anbarasu, Adv.

Advocate for Pet/Ap. : Mr.A.K.Rajaraman, Adv

Judgement :

This civil revision petition is preferred under Section 115 of the Civil Procedure Code as against the order dated 06.03.2012 passed by the learned District Munsif, Polur, Tiruvannamalai Taluk in I.A.No.248 of 2011 in O.S.No.260 of 1992.

ORDER

1. Heard both sides.

2. Animadverting upon the order dated 06.03.2012 passed by the learned District Munsif, Polur, Tiruvannamalai Taluk in I.A.No.248 of 2011 in O.S.No.260 of 1992,

this civil revision petition has been focussed.

3. The parties, for convenience sake, are referred to here under according to their litigative status and ranking in the suit.

4. Broadly but briefly, narratively but precisely, the germane facts absolutely necessary for the disposal of this civil revision petition would run thus:

(i) The respondents 1 and 2 herein, viz., Devagi and Suresh filed the suit in O.S.No.260 of 1992 seeking maintenance for Devagi as well as for Suresh as against D1 and also for partition of minor Suresh's 4/21 shares in the property described in the "B" Schedule of the plaint arraying all other respondents herein and the revision petitioner, as defendants. The preliminary decree was passed and thereafter, final decree also was passed. Subsequently, E.P was filed by the decree holder.

(ii) Thereafter I.A.No.248 of 2011 was filed by the said Ravi/the revision petitioner herein to get the delay of 6067 days condoned in filing the application to get set aside the exparte preliminary decree dated 07.03.1994. The plaintiffs/respondents 1 and 2 herein resisted the said application by filing counter. However, the lower court dismissed the said application.

(iii) Being aggrieved by and dissatisfied with the same, this revision has been focussed on various grounds.

5. The learned counsel for the revision petitioner placing reliance on the averments in the affidavit accompanying the application in I.A.No.248 of 2011 and also the grounds of revision, argued in support of the case of the revision petitioner to get the delay of 6067 days condoned in filing application to get set aside the exparte preliminary decree. The main focus of his argument is on the point that admittedly as on the date of presenting of the suit informa pauperis, the revision petitioner/the original D2 was described as a minor. Even then, the rules relating to the proceeding against the minor were not adhered to, which resulted in the entire proceedings getting vitiated as per law.

Accordingly, he would pray for setting aside the order passed by the court below.

6. Per contra, the learned counsel for the respondents 1 and 2 /the original plaintiffs would argue to the effect that absolutely there is no merit in this revision as the lower court in its order threadbare discussed the participation of the revision petitioner herein during the final decree proceedings and that suppressing those facts, he did choose to file the application in I.A.No.248 of 2011 to get such huge delay of 6067 days condoned.

Accordingly, he would pray for the dismissal of the revision petition.

7. The whole kit and caboodle of facts and figures that stood transpired from the submission made on both sides as well as the records could succinctly and precisely be set out thus:

[a] The first plaintiff is the wife of D1 Pachiappan and the second plaintiff is the son of first plaintiff and D1. D2 is the younger brother of D1, who represented D2 in the proceedings officially till be became major. D3, who died pendente lite, happened to be the mother of the remaining defendants. D4 to D7 are the elder sisters of D1 and D2. After contest the preliminary decree was passed allotting maintenance in favour of the first plaintiff and the second plaintiff payable by D1 and partition was also effected. The second plaintiff Suresh was awarded 4/21 shares in the entire "B" Schedule properties treating him as one of the co-sharers. Subsequently,the final decree was passed. During the final decree proceedings, Commissioner was appointed so as to suggest ways and means of dividing the properties by metes and bounds as per the preliminary decree.

[b] Indubitably and indisputably, the fact remains that D2 in his own deposition admitted that the Advocate Commissioner visited the suit property on 06.10.2009, whereupon the revision petitioner came to know about the passing of the exparte preliminary decree as against him.

8. At this juncture, I would like to observe that if really for the first time, the revision petitioner/D2 came to know about the exparte preliminary decree dated 07.03.1994 on 06.10.2009, there is no knowing of the fact as to what prevented the revision petitioner in filing an application to get the delay condoned in filing the application to get set aside the exparte preliminary decree under Order 9 Rule 13

of CPC immediately, thereafter. However, the fact remains that on went the final decree proceedings and during the pendency of the final decree application, as per records he was represented by an Advocate. However, during enquiry in the I.A.No.248 of 2011, D2 would disown he having signed the vakalat. If that be so, there is nothing to indicate as to what action he took as against the Advocate concerned. Over and above that even after passing of the final decree on 13.11.2009, it appears no action was taken by the revision petitioner/D2. E.P was filed by the decree holder and during the pendency of the E.P itself, application was filed admittedly by the revision petitioner for raising his objection for recording the delivery effected in favour of Suresh, the second plaintiff and that application was dismissed. However, no steps were taken challenging the said order in the higher forum. The lower court correctly adverted to these facts and appropriately and aptly pointed out that the contentions of the revision petitioner were not tenable.

9. Surprisingly, the I.A.No.248 of 2011 was filed only on 19.11.2010 and that itself is indicative of the fact that almost a year after passing of the final decree and also considerable time after the dismissal of his application resisting the recording of delivery such I.A was filed leisurely. It could also be noted that even as on the date of numbering the pauper O.P as a suit, the revision petitioner became major and the learned counsel for the revision petitioner while putting forth the arguments before this court would state that during the year 1994 there emerged a partition between D1 and D2, so to say, pendente lite and it was a registered one. Now the revision petitioner would try to contend as though D1 has defrauded him etc. It is therefore crystal clear that it is not a simple case, where the minor was not properly represented. The court was called upon to decide whether there was justification for condoning the delay of 6067 days in filing the application to get the delay condoned in filing the application to get set aside the exparte preliminary decree. Keeping in mind the well settled proposition of law and also the fact that there was enormous delay, the court below declined to condone such huge delay.

10. At the outset itself, I recollect and call up the recent decision of the Hon'ble Apex Court reported in 2010(2) Supreme 115 (Oriental Aroma Chemical Industries Ltd., vs. Gujarat Industrial Development Corporation and another) and an excerpt

from it would run thus:

"8. .....The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and other similar statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - Collector, Land Acquisition, Anantnag v. Mst.Katiji, (1987) 2 SCC 107, N.Balakrishnan v. M.Krishnamurthy, (1998) 7 SCC 123 and Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC 106. ....."

11. One other decision of the Hon'ble Apex Court reported in AIR 2002 SC 1201 (Ram Nath Sao alias Ram Nath Sahu and aothers v. Gobardhan Sao and others) also could fruitfully be cited; certain excerpts from it would run thus:

"13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses." (emphasis added)

12. Scarcely could it be countenance that the revision petitioner was totally unaware of the proceedings in O.S.No.262 of 1992 till the filing of I.A.No.248 of 2011. As on the date of presenting of the said I.A. the revision petitioner was 36 years old, as per the version on the revision petitioner's side. Even by phantasmagorical thoughts or by any stretch of imagination, it cannot be assumed that D2 a person of 36 years old, it but presumably up to the age of 30 years, who was all along living under the same roof under D1 had not heard about the litigation, which started in the year 1991. Even after coming to know of the steps taken by the Advocate Commissioner, he had not chosen to swing into action and as such, the lower court seeing the reality, decided the lis, warranting no interference in this revision.

13. I recollect the famous adage that every trial or enquiry is a voyage of discovery, in which truth is the quest. Similarly, in this matter, the lower court probed into the matter and after thorough analysis of the facts and figures held that the revision petitioner was not at all entitled to get the huge delay of 6067 days condoned in filing the application to get set aside the preliminary decree.

14. In the result, I could see no merit in this revision. Accordingly, it is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.