
(2022) 08 TEL CK 0040

High Court For The State Of Telangana:: At Hyderabad

Case No: Civil Revision Petition No. 350 Of 2019

B.Ashok Rao

APPELLANT

Vs

U.Narsimha Reddy

RESPONDENT

Date of Decision: Aug. 3, 2022

Acts Referred:

- Limitation Act, 1963 - Article 136
- Code Of Civil Procedure, 1908 - Section 151
- A.P. Rights In Land And Pattadar Passbooks Act, 1971 - Section 5, 5A
- Limitation Act, 1963 - Section 14, 14(2)

Hon'ble Judges: P.Sree Sudha, J

Bench: Single Bench

Advocate: P Shiv Kumar

Final Decision: Allowed

Judgement

1. The Civil Revision Petition No.350 of 2019 is preferred against the orders dated 22.10.2018 passed in E.A.No. 745 of 2015 in E.P. No.58 of 1984 in

O.S. No.389 of 1969 passed by the V Senior Civil Judge, City Civil Court, Hyderabad. The said E.A. is filed under Section 151 of Code of Civil

Procedure by the petitioner/DHR/plaintiff against the respondents/JDRs/defendants to re-open the E.P. No.58 of 1984 for the purpose of passing

appropriate orders for execution of sale deed in his favour in respect of petition schedule property which was dismissed by the trial Court.

2. The facts before the trial Court are as follows:

The petitioner/Decree-holder filed O.S. No.389 of 1969 against Judgment-debtor No.1/defendant No.1 for specific performance of agreement of sale

dt.17.09.1962 in respect of land admeasuring Ac.82-29 gts., in Sy.Nos.131, 130,129, 128, 127 and 126 situated at Kandlakoya village, Medchal

Mandal, now in Ranga Reddy District. The said suit was dismissed on 28.09.1971, against which, the decree-holder herein filed an appeal being

CCCA No.190 of 1972 before the High Court and during the pendency of the said appeal, there was a compromise between the decree-holder and

legal heirs of defendant No.1. In view of the said compromise, the appeal was decreed on 20.07.1976 in respect of land Ac.20-30 gts., in Sy.No.130,

131 and 129 on the Eastern side situated at Kandlakoi village, as against the total extent of Ac.92-29 gts., The decree-holder filed E.P. No.58 of 1984

for obtaining a registered sale deed in terms of the compromise decree dt.20.07.1976 passed in CCCA No.190 of 1972. In the said E.P., there was

another compromise to an extent of Ac.12-00 gts., in Sy.Nos. 131, 130 and 129 of Kandlakoi village as against Ac.20.-30 gts., agreed in the appeal.

Accordingly, an order was passed on 21.02.1985 and E.P. was closed.

2.1 In pursuance of the said order, decree-holder herein approached the M.R.O. and got validated the land of Ac.12-00 gts., in his favour by following

the procedure contemplated under Section 5-A of A.P. Rights in Land and Pattadar Passbooks Act 1971 by paying necessary stamp duty and

registration charges vide file No.C/7/92 dt.30.06.1992. The respondents herein filed an appeal vide proceedings No.C/580/1993 before the Revenue

Divisional Officer, R.R. District, against the said order and he dismissed the appeal on 25.09.1993, against which, the respondents again preferred an

appeal before the Joint Collector in revision in file No.D5/8397/1994 and he also dismissed the revision on 04.12.2000, against which, the respondents

filed W.P. No.3300 of 2001 and it was dismissed on 15.10.2001. Against which, the respondents filed W.A. No.1812 of 2001 before the Division

Bench and the appeal was allowed by setting aside the order of the Single Judge on 07.02.2005 and also quashed all the orders passed by the Revenue

Authorities under Section 5-A of the Act. Aggrieved by the said judgment, the decree-holder herein filed SLP No.10907 of 2005, but it was dismissed

on 13.10.2015.

2.2 The petitioner herein stated that in view of the compromise, the respondents delivered the physical possession of the land to an extent of Ac.12-00

gts., and ever since he has been in continuous possession and enjoyment of the land in view of the orders of the High Court in W.A.No.1812 of 2001

compromise decree could not have been validated by the Revenue Authorities, as such, he was compelled to file a petition and obtained a regular sale

deed. As the proceedings are pending before the Revenue Divisional Officer, Joint Collector and the High Court (Single Judge) passed orders in his

favour, there was no occasion for him to approach Court as he has been in continuous possession and since respondents did not execute the registered

sale deed in respect of the land agreed under the compromise, he filed an application before the trial Court to re-open the E.P. No. 58 of 1984 and

direct the respondents to execute a registered sale deed in his favour.

3. In the counter filed by the respondents No.2 and 3 i.e. judgment-debtor No.2 admitted regarding the compromise decree in the appeal and again in

the E.P. and also regarding the proceedings before the Revenue Authorities and the order of Writ Appeal and SLP, but simply stated that the

petitioner herein was directed to obtain a regular sale deed within one month from the date of the compromise, but he did not choose to do so. On the

other hand, he approached wrong Forum and validated the compromise order by avoiding the payment of necessary stamp duty and registration

charges and it was held in W.A. No.1812 of 2001 that it cannot be validated by the revenue authorities. As such, now he cannot ask the Court to

register the sale deed in his favour. He filed this application on 20.11.2015 beyond the period of limitation of 12 years under Article 136 of the

Limitation Act and thus, it is to be dismissed.

4. The trial Court after considering the evidence on record and citations filed by both parties dismissed the application. Aggrieved by the said order,

this C.R.P. is preferred. The petitioner herein mainly contended that he pursued the litigation before the Revenue Authorities with diligence and good

faith and obtained favourable orders not only from M.R.O., R.D.O., Joint Collector and also from the Single Judge, but the said orders were set aside

by the Division Bench in view of ratio laid down by the Hon'ble Supreme Court in KONKANA RAVINDER GOUD Vs. BHAVANA RISHI

COOPERATIVE HOUSE BUILDING SOCIETY, HYDERABAD 2003(5) ALD 654 in the order dt.07.02.2005. As such, now he intended to

approach the trial Court for execution of the sale deed and he is entitled for exclusion of time under Section 14 of the Limitation Act as he was

diligently and bona fide pursuing his prior proceedings before the Revenue Authorities under Section 5-A of the Act as per ratio laid down by the

Apex Court in GHASIRAM Vs. CHAIT RAM SAINI (1998)6 SCC 200. He also relied upon citation reported in KETAN V.PAREKH Vs.

SPECIAL DIRECTOR, DIRECTORATE OF ENFORCEMENT AIR 2012 SC 683 in which it was held that the petitioner has to satisfy the

following conditions for application of Section 14 of the Limitation Act, which reads as follows:

- a) Both prior and subsequent proceedings are civil proceedings prosecuted by the same party.
- b) The prior proceeding had been prosecuted with due diligence and good faith.
- c) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature.
- d) The earlier proceeding and the later proceeding must relate to the same matter in issue and
- e) Both the proceedings are in a Court.

5. The petitioner stated that he complied with all the conditions and thus, the said period can be excluded as per Section 14 of the Limitation Act and

thus, requested the Court to set aside the order of trial Court in E.A. No.745 of 2015 dt.22.10.2018.

6. In E.P. No.58 of 1984 in O.S. No.381 of 1969 dt. 21.02.1985, the decree-holder and judgment-debtors again entered into compromise for an extent

of Ac.12-00 gts., of land instead of Ac.20-39 gts., and also relinquished their claim over balance extent of land Ac.08-39 gts., in Sy.No.129 and thus,

the trial Court observed as follows:

“2. The judgment debtors have handed over the physical possession of the above said lands referred to on para No.1 in all aggregating to Ac.12-00

gts., to the decree-holder.

3. The Judgment debtors further agreed to execute and register the sale deed in respect of the above mentioned Ac.9-00 gts., within one month and in

respect of Ac.3-00 gts., in Sy.No.128 after getting the lands mutated in the names from this date. Necessary stamp duty and registration charges shall

be borne by the decree-holder alone.

4. In case of failure or default in executing and register the sale deed as agreed by the judgment-debtors, the decree-holder is at liberty to get the

same executed through Court.

7. The respondents herein mainly contended that in the E.P. it was specifically directed that sale deed for Ac.9-00 gts., has to be executed within one

month and the petitioner was also directed to approach the Court for execution of the registered sale deed if the judgment-debtors failed to execute

the same. In spite of conditional order, he has not chosen to appear before the Court and approached the Revenue Authorities for the reasons best

known to him. He further argued that with the said direction recording the original memo of compromise along with claim, the E.P. was closed on

21.02.1985, and thus the decree-holder herein cannot re-open the same after more than 37 years. He can seek for execution of the decree within 12

years, but he failed to do so.

8. The decree-holder herein contended that in view of default clause under para No.4, the E.P. was closed only for statistical purpose and it was not

closed after conclusive adjudication of rights of the parties. As such, fresh application filed by him can be treated as continuation of the former

application and E.P. can be re-opened and judgment-debtors can be directed to execute a registered sale deed in his favour.

9. The trial Court observed that the closure of the E.P. is not for statistical purpose and it cannot be re-opened again for continuation of the

proceedings. So also, the petitioner herein has not filed the application within limitation and he is not entitled for exclusion of the time spent before the

Revenue Authorities under Section 14 of the Limitation Act.

10. Now, it is for the Court to see whether the petitioner/decree-holder herein is entitled for exclusion of time as claimed by him or not?

11. The learned Counsel for the petitioner has relied upon the decision of Apex Court in SESH NATH SINGH AND ANOTHER Vs.

BAIDYABATI SHEOR APHULI CO-OPERATIVE BANK LIMITED AND ANOTHER (2021) 7 SCC 313 in which it was held as follows:

“Section 14(2) of the Limitation Act provides that in computing the period of limitation for any application, the time during which the petitioner had

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 like

nature, is unable to entertain it. The conditions for exclusion are that the earlier proceedings should have been for the same relief, the proceedings

should have been prosecuted diligently and in good faith and the proceedings should have been prosecuted in a forum which, from defect of jurisdiction

or other cause of a like nature, was unable to entertain it.

12. Learned Counsel also submitted that Section 14 of the Limitation Act is applicable in case of mistake of remedy or selection of wrong Forum. As

per the above citation, the policy of the Section is to protect against bar of limitation when he institutes proceedings which by reason of defect, cannot

be decided on merits.

13. In this case, the petitioner obtained a validated compromise decree under Section 5-A of A.P. Rights in Land and Pattadar Passbooks Act 1971

before the M.R.O. As on the date of approach by the petitioner before the said Authority, the M.R.O. was authorized to validate the same under

Section 5-A with a nominal stamp duty and registration charges. Therefore, it cannot be said that willfully he opted for wrong Forum. Moreover,

respondents herein contested each and every proceeding of the petitioner herein. When the order was passed in favour of the petitioner by the

M.R.O., the respondents challenged the same before the R.D.O. and when he confirmed the same, again they challenged it before the Joint Collector

and also before the Single Bench. When both Courts confirmed the order, Writ Appeal was filed. As on the date of disposing of the matter by the

Division Bench, on 05.09.2003 law was laid down in KONKANA RAVINDER GOUD Vs. BHAVANA RISHI COOPERATIVE HOUSE

BUILDING SOCIETY, HYDERABAD and held that under Section 5 of the Act, M.R.O. is not authorised to validate the transfer of the property

under an agreement of sale. In pursuance of the said judgment, the Division Bench set aside the orders of the Single Judge and also Revenue

Authorities. In view of the order of the M.R.O., pattedar passbooks and title deeds were issued in favour of petitioner herein and his name was

reflected in the pahanies as owner and possessor of the land. Therefore, I find it reasonable to give an opportunity to the petitioner herein to approach

the trial Court under E.P. proceedings for execution of the sale deed in his favour. Admittedly, judgment-debtors entered into the compromise with the

decree-holder herein and agreed to execute sale deed only to an extent of Ac.12-00 gts., instead of Ac.20-39 gts., and he also agreed for the same by

relinquishing his claim on the balance extent. As such, now they cannot go back from their word and they are not supposed to take advantage of the

period of limitation. The petitioner herein is entitled for exclusion of time under Section 14 of the Limitation Act as he was prosecuting the litigation

before the other Forums diligently throughout the period. He fought for his right from M.R.O. to the Supreme Court by way of filing SLP and later he

approached the trial Court with all the reasons and when he was not considered, he filed this C.R.P. and thus, it cannot be said that there are latches

on his part. Though in the decree itself it was specifically mentioned that possession was entrusted to the petitioner herein, taking advantage of the

orders of the Division Bench, the respondents claimed that he never entrusted for possession and they are still in possession of the said property and

relied upon Ex.R1 to R6 and Ex.R10 to prove their possession and enjoyment, whereas the petitioner herein filed Ex.P1 to P11 to substantiate his

version. The trial Court has not gone into the issue of possession as the application is filed only for exclusion of time under Section 14 of the Limitation

Act.

14. It was also argued that under Section 14 of the Limitation Act Court means only Civil Court, but the petitioner herein pursued the matter with

Revenue Authorities and it will not fall within the ambit of Court. But civil proceedings prosecuted in any other Forum including the Revenue

Authorities, will come under the meaning of the Court. Section 14 of the Limitation Act includes quasi judicial Tribunals. Therefore, this Court finds

that it is just and reasonable to set aside the order of the trial Court dt. 22.10.2018.

15. In the result, Civil Revision Petition is allowed by setting aside the order of the trial Court dt. 22.10.2018. No costs.

16. Miscellaneous petitions, if any, pending shall stand closed.