(2013) 07 AP CK 0047

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 1009 of 2013 and CRPMP No"s. 1377, 3889 of 2013

Bavisetty Jagganna Dora (died), Smt. Bavisetty Sanyasamma, Sri Bavisetty Ramana Babu and Sri Bavisetty China Appala Swamy Dora		APPELLANT
	Vs	
Somi Estates and Housing (P) Ltd.		RESPONDENT

Date of Decision: July 26, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13
- Limitation Act, 1963 - Section 5

Citation: (2013) 5 ALD 221 : (2013) 6 ALT 237

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: Bharathi Kumari Karri, for the Appellant; M. Hamsa Raj, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.
The sole respondent herein filed O.S. No. 246 of 2006 in the Court of the I Additional District Judge, Visakhapatnam against the petitioners herein for the relief of specific performance of agreement of sale, dated 04.12.2003, in respect of the suit schedule property. Being the father of petitioners 2 to 4, the deceased 1st petitioner filed written statement on 20.06.2007 and the same was adopted by the other petitioners. The 1st petitioner died on 27.07.2007. However, without taking any formal steps to bring the legal

representatives of the deceased 1st petitioner on record, the trial Court proceeded and passed an ex parte decree, dated 07.09.2009. E.P. No. 5 of 2012 was filed for execution of the decree. At that stage, petitioners 2 to 4 filed an application under Order 9 Rule 13 C.P.C., with a prayer to set aside the ex parte decree. Since there was delay, I.A. No. 754 of 2012 was filed u/s 5 of the Limitation Act. They reckoned the period of limitation from the date of knowledge and stated that the delay is 31 days. The application was opposed by the respondent. Through its order, dated 07.02.2013, the trial Court dismissed the I.A. Hence, this revision.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

3. The proceedings have a fairly long and chequered career and an ex parte decree was passed. The record discloses that though the 1st defendant in the suit i.e. the 1st petitioner died on 27.07.2007, his legal representatives were not brought on record, nor it was endorsed that petitioners 2 to 4 are his legal representatives. The decree was passed as though the 1st defendant was alive.

4. Petitioners 2 to 4 stated that their father was looking after the litigation and that they are not aware of the proceedings. They accordingly prayed for condonation of delay in filing the application under Order 9 Rule 13 C.P.C. Though this version was contradicted by the respondent in his counter, the Court was under obligation to bestow its attention to the relevant facts. However, with one sentence, namely "the petition is misconceived and also an attempt to mislead the Court", the I.A. is dismissed".

5. This Court takes exception to the casual and indifferent manner in which the trial Court has dealt with an application filed in a suit pertaining to valuable item of immovable property. If it was not satisfied with the contention of the petitioners, be it as to the extent of delay or the reasons mentioned therefor, the minimum expected of the Court is to record its reasons in support of its conclusions. An order passed in such a hasty and shabby manner cannot at all be countenanced.

6. Coming to the merits of the matter, it is not in dispute that the father of petitioners 2 to 4 i.e. the deceased 1st petitioner was looking after the litigation and he alone filed the written statement. Once the factum of the death of the 1st petitioner was brought to the notice of the Court and the respondent herein, steps ought to have been taken to bring the legal representatives on record or take note of the fact if they are already on record. A serious flaw has crept into the judgment and decree passed by the trial Court. It cannot be said that petitioners 2 to 4 were not diligent in pursuing the remedies. Soon after they came to know about the filing of the E.P., they filed the application under Order 9 Rule 13 C.P.C. This Court is of the view that the petitioners deserve to be given an opportunity.

7. Hence, the civil revision petition is allowed and the order under revision is set aside. As a result, the delay is condoned. To avoid further complication in the matter, the

application filed under Order 9 Rule 13 C.P.C. shall stand allowed and the ex parte decree, dated 07.09.2009, is set aside. The respondent is granted four weeks time from today to file an application to bring the legal representatives of the deceased 1st petitioner on record. If that step is taken and the formalities are complete, the trial Court shall endeavour to dispose of the suit on merits within a period of six months from today. There shall be no order as to costs. The miscellaneous petition in this revision shall also stand disposed of.