

(2007) 09 KAR CK 0026

In the Karnataka High Court

Case No : Review Petition No. 697 of 2005 in W.A. No. 969 of 1991

Balu Rama Pujari (since deceased by his LRs. Rathnavva
Balappa Poojari)

APPELLANT

Vs

Gurulingappa Mallappa Bailwad (deceased by his LRs.
Eravva), The Assistant Commissioner, Belgaum Sub-Division,
The Special Deputy Commissioner and The State of
Karnataka

RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Citation : (2007) ILR (Kar) 4217 : (2008) 2 KarLJ 442

Hon'ble Judges : V. Gopala Gowda, J; C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : Mudukana Goud. R. Patil and Rajashekar. R. Gunjal, for the
Appellant; G. Balakrishna Shastry, for R1a and Ramesh Kerman, HCGP for R2-4,
for the Respondent

Final Decision : Dismissed

Judgement

1. Settlement not reported. Learned Counsel for the first respondent, has offered three cheques for a total amount of Rs. 1,00,000/- but petitioner is not present to accept the same.

2. We have heard the learned Counsel for the parties both on the application for condonation of delay and on merits.

3. This review petition was filed on 19/11/2005 seeking to set aside the order Dt. 18/7/1994 passed in W.A. No. 969/ 1991. Since there is a delay of 4109 days (more than 11 years), I.A.I/2006 is filed to condone the said delay. Regarding delay, the petitioner has stated in the application as under:

2. It is submitted that this Hon'ble Court allowed the Writ Petition on the ground that the petitioner is not produced the receipt of payment made in respect of the occupancy price on 24/7/1967 which is paid by the father of the husband of the

petitioner.

3. It is submitted that the petitioner is producing the attested copies of the receipt dated 24/7/67 attested by the Gazetted Sub Treasury Officer, Treasury/Khanapur as a Document-A, and the petitioner also produced the attested copy of the receipt dated 21/7/1967 which is attested by the branch Manager, State Bank of India, Khanapnra, and marked as Document No. B.

4. In the objections filed to the application it is stated that in O.S. No. 98/2000 filed by the first respondent and others, the petitioner herein was the first defendant. The suit summons were served on her on 24-7-2000. In the plaint itself the disposal of the writ appeal is mentioned. The order sheet of the suit is produced in which she has signed on 1-8-2000. Therefore, the statement of the petitioner that she came to know about the disposal of the writ appeal only in the year 2004 is factually incorrect.

4. We have perused the documents produced along with the statement of objections and found that what the petitioner stated is not correct. She had the knowledge of disposal of the writ appeal way back in the year 2000 itself. The disposal of the writ appeal is mentioned in the plaint in O.S. No. 98/2000. Even though we are aware that parties should not be denied justice on technical grounds, in this case there is inordinate delay of more than 11 years in filing this review petition. Satisfactory explanation is not offered to condone the delay. The reason given for the delay is not worth accepting. Therefore, the review petition is liable to be dismissed on the ground of inordinate delay and laches.

5. The review petition is also liable to be dismissed for yet another reason. The prayer made is to set aside the order passed in the writ petition. Such a relief cannot be granted in review petition. In review petition review of an older or judgment can be sought find not for setting aside the same. Since the writ appeal was disposed of by a Division Bench of this Court, if petitioner want to set aside the same, she should have approached the Supreme Court. Except, the power to review, there is no power to set aside an order in a review petition. Thus, the prayer made in this review petition is also misconceived and cannot be granted.

6. Even on merits also, we find no ground to review the order passed in the writ appeal. Review is sought by producing copies of two receipts dated 22-7-1967 along with I.A.II/2006. Both the documents are one and the same. One is attested by the Treasury Officer and the other is a true copy of the same. But it is a mere challan for having paid Rs. 14.05 and for what purpose it is paid or in respect of which property the payment is made, is not known as no survey number is mentioned. The name of the person who made payment is mentioned in Hindi as C.T. Patil Thalati Asogaa, who is neither the petitioner nor her husband. Therefore, the said document do not pertain to the property over which the petitioner claiming right. Hence, I.A.II/2006 is rejected.

7. Along with Memo dated 3-8-2006 the petitioner has produced copy of the

grant order dated 20-7-1974. The same is in favour of first respondent Gurulingappa Mallappa Bailwad, who has also produced the same as Annexure R8 along with the objections statement. Hence, the documents produced by the petitioner do not support her case in any manner. On the other hand, they support the first respondent.

8. Viewed from any angle, the petitioner has utterly failed to prove her claim over the land in question. Therefore, even on merits also petitioner has no case and no ground is made out to review the order passed in the writ appeal. Review petition is devoid of merits and liable to be dismissed.

9. Accordingly, the Review Petition is dismissed not only on the ground of inordinate delay and laches but also on merits also.