
(1999) 10 AP CK 0067
In the Andhra Pradesh High Court
Case No : Appeal No. 1957 of 1989

Mandal Revenue Officer

APPELLANT

Vs

S. Narayana Rao (died) per L.Rs.

RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, Order 22 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2000) 1 ALT 700

Hon'ble Judges : N.Y. Hanumanthappa, J;A.S. Bhate, J

Bench : Division Bench

Advocate : Govt. Pleader for C.T, for the Appellant; P.V. Srinivasa Rao, for the Respondent

Final Decision : Dismissed

Judgement

N.Y. Hanumanthappa, J.—Against the decree and judgment of the Court of the Subordinate Judge at Asifabad in O.P. No. 55/87, dated 22-7-1988, the present appeal has been filed by the State.

2. Before deciding Civil Miscellaneous Petition filed u/s 5 of the Limitation Act requesting the Court to condone the delay in filing the other two applications, viz., under Order 22 Rule 9 CPC to set aside the abatement caused by the death of the sole respondent and another application under Order 22 Rule 4 CPC to bring on record the legal representatives of the deceased sole respondent, it is proper to advert to some of the facts involved in the case.

3. An area of Acs. 10-00 of land situated in Paduthapalli village in Mancherial Mandal of Adilabad District was proposed to be acquired u/s 4(1) of the Land Acquisition Act for providing house-sites to the weaker sections of Paduthapalli village. The Land Acquisition Officer passed an award on 9-9-1983 awarding compensation for the acquired lands at the rate of Rs. 10,000/- per acre. Dissatisfied with the same, the claimant sought reference u/s 18 of the Land Acquisition Act. Accordingly, a reference was made to a competent civil Court.

4. Before the Court below, to support that he is entitled to a compensation of Rs. 40,000/- per acre, the claimant filed Ex.B-1, registered sale deed, in respect of 20 guntas of land situated in the same village in S. No. 32. The vendor to the said sale deed, Ex.B-1 is none other than the claimant himself. The vendee was examined as R.W. 2. The reference Court relying upon Ex.B-1, relating to small bit of land, awarded compensation at the rate of Rs. 40,000/- per acre without deduction towards developmental activities. Aggrieved by the same, the State preferred appeal before this Court in A.S. No. 1957/89. As on the date of filing of the appeal the claimant was alive. Thereafter, the claimant died, which fact, the State was not aware. The same was not placed before the Court. When the case was listed, this Court ordered notice to the claimant-respondent. The said notice was returned with an endorsement that the person named therein, viz., the claimant died on 12-8-1988. Neither this fact was noticed by the Office nor the appellant. Believing that the claimant is still alive, the appeal was listed for final hearing. After hearing the State, thinking that the claimant though served with notice, remained absent, this Court by its order dated 27-11-1998 allowed the appeal filed by the State holding that the compensation ordered by the Court below deserved to be deducted by 1/3rd towards developmental activities. Immediately after disposal of the appeal, the State filed three applications - (i) for bringing on record the legal representatives of the claimant, (ii) for setting aside the abatement caused and (iii) for condonation of delay in filing the above two applications. The legal representatives of the claimant filed an application requesting this Court to recall its earlier order dated 27-11-1998 passed in A.S. No. 1957/89 giving reasons that when they went to the Office of the Mandal Revenue Officer, they came to know that this Court has allowed the appeal filed by the State reducing the compensation ordered by the reference Court.

5. According to Sri S. Narayana Rao, the learned Counsel appearing for the review applicants (sons of the claimant), the order that was passed on 27-11-1998 is nullity as it was passed against the dead person. He also submitted that to condone the delay of nearly 10 years is not reasonable. On the other hand, it shows the deliberate negligence on the part of the State in not caring to know the death of the claimant-respondent when the endorsement on the notice was to the effect that the claimant-respondent died on 12-8-1988. The legal representatives of the claimant-respondent were also not aware of the filing of the appeal by the State against the order of the reference Court, under what circumstances this Court interfere in the applications filed u/s 5 of the Limitation Act and also under Order 22 Rule 9 CPC and Order 22 Rule 4 CPC. Hence, it is necessary to extract these Rules hereunder.

6. Section 5 of the Limitation Act reads as under:

"5. Extension of" prescribed period in certain cases:- 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.

Explanation:- The fact that the appellant or the applicant was misled by any order, or judgment of the High Court in ascertaining or computing prescribed period may be sufficient cause within the meaning of this Section."

Order 22 Rule 9 CPC reads as under:

"Effect of abatement or dismissal.

9. (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of Section 5 of the Indian Limitation Act, 1877 (15 of 1877) shall apply to applications under Sub-rule (2).

Explanation: Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order."

Order 22 Rule 4 CPC reads as under:

"Procedure in case of death of one of several defendants or of sole defendant.

4(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under Sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as it has been pronounced before death took place.

(5) Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963) and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application u/s 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said Section 5, have due regard to the fact of such ignorance, if proved."

7. Thus arguing the learned Counsel for the review petitioners urged that the entire order dated 27-11-1998 be recalled and the State appeal be dismissed as the same was filed against the dead person.

8. As an answer to these contentions, the learned Government Pleader Sri Krishna Murthy submitted that the appeal was filed within the statutory period of three months from the date of order passed by the Court below. The State was not aware as to the death of the claimant respondent. The so-called endorsement on the Court notice sent to the claimant-respondent mentioning that the claimant-respondent died on 12-8-1988 was neither brought to the notice of the Appellant-State nor to the Court. It was purely a negligence on the part of the Office. If that fact was brought to the notice of the Court, the Court would have been in a position to pass appropriate orders. Thus, it was not on the part of the State but it was on the part of the Office of the Court. According to the learned Government Pleader, when postal authorities tried to serve the notice of the appeal filed by the State, on the respondent, it was returned saying that the original claimant-respondent died on 12-8-1988. Therefore, it shall be presumed that the postal authorities contacted some one in the house of the original claimant-respondent and that person or persons might have been made known about the institution of an appeal before this Court. If they were diligent, they should have immediately taken steps. Thus, the negligence, if any, is not on the part of the State but it was purely on the part of the legal representatives of the original claimant-respondent. According to him, the position of the State will be different from the individuals. Whether sufficient cause is shown or not is purely a question of fact and it is left to the discretion of the Court. In the eye of law, Article 14 of the Constitution of India equally applies to both the parties. Wherever the Court feels that in a given case injustice has been done and a person seeks to correct it even if there is an inordinate delay, the Court can step in and correct it as held by the Supreme Court in the case of Collector, Land Acquisition, Anantnag v. Katiji, AIR 1987 SC 1353, wherein the Supreme Court held as follows:

"Any appeal or any application, other than an application under any of the

provisions of O.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."

9. Whenever a sufficient cause is shown whether it is a case of condonation of delay or not is decided by this Court and the other High Courts in the following decisions. *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, , *Balakrishnan Vs. Ayyaswami*, , *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, , *G. Ramegowda v. Special Land Acquisition Officer, Bangalore*, AIR 1985 SC 115, *Mohan Vasta v. State*, and *Collector, Land Acquisition, Anantnag v. Katiji* (cites supra): As mentioned earlier, in matters of awarding compensation or other similar nature, if there is any delay, the Courts should be liberal in condoning the delay. But it is different thing, if a suit is instituted or an appeal is filed against a dead person, in the case on hand, as on the date of the removing the Office objection in the appeal that was presented by the State, the original claimant-respondent was no more. When the notice was ordered to the said claimant-respondent, it was the duty of the local authorities or the other Officers concerned to bring to the notice of the Court as to the death of the original claimant-respondent. If the postal authorities had brought to the notice of the concerned authorities, the learned Government Pleader would have been in a position to make appropriate application to bring his legal representatives on record. Thus, it was deliberate negligence on the part of the authorities concerned in not bringing to the notice of the learned Government Pleader as to the death of the original claimant-respondent, which resulted in filing an appeal against a dead person, which in the eye of law nullity. As such, any interference in such an appeal is not warranted. If these facts were brought to the notice of the Court, we would not have interfered with the order of the Court below. On the other hand, we would have said that the appeal against a dead person is not maintainable or allowing the appeal does not serve any purpose. Since it has come to our notice even after disposal of the appeal, the factual position coupled with correctness of allowing the appeal, viz., against the dead person, there is no other go except to recall our order passed on miscellaneous petitions. Accordingly, the orders passed on all the three miscellaneous petitions are recalled. Since it is said that as on the date of institution of the appeal, the original claimant-respondent was not alive, we hold that the appeal was filed against the dead person. Thus, the same is rejected in limini. No costs.