

(2011) 08 KAR CK 0098

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 9222 of 2010

Mrs. Mary Vasantha Joseph and Others

APPELLANT

Vs

Mrs. Gracy Abraham and Others

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, 151
Limitation Act, 1963 — Section 5

Citation : (2011) 08 KAR CK 0098

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : B.V. Gangi Reddy and Subba Rao and Company, for the Appellant;
Vivek K. Chandy, for C/R1, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—One Jospheh Devu, filed O.S 176/1976 in the Court of Civil Judge, Bangalore City, to pass a judgment and decree against the Defendants for:

1. a declaration that the sale deed dated 12.06.1967 in favour of the 1st Defendant as only a nominal document and does not create any valid title in the 1st Defendant;
 2. for a direction that the 1st Defendant should execute a deed of cancellation of sale deed dated. 1.2.06.1967;
 3. to direct the 7th Defendant not to pay the rents to the 1st Defendant, but to pay the same to the Plaintiff and for costs, interests and incidental reliefs.
2. The suit was contested by the 1st Defendant, who filed written statement dated. 08.02.1977, which was adopted by Defendants 2, 3 & 4. The 7th Defendant filed separate written statement dated 15.06.1977. Issues were framed on 18.08.1977. The suit was posted for evidence, The Plaintiff and counsel having remained continuously absent, the suit was dismissed for default

with costs on 22.03.1979.

3. Plaintiff-Joseph Devu having expired, his wife and children i.e., the Appellants, filed a Misc.case on 17.12.1999 under Order 9 Rule 9 r/w Section 151 of C.P.C, with a prayer to set-aside the dismissal order dated 22.08.1979 passed in O.S 176/1976 and to restore the suit. The petition having been filed with delay of 7417 days, I.A. 1 was filed to condone the delay in presenting the petition. The said case was opposed by 1st Respondent, by filing statement of objections. It was also stated that, there is suppression of pendency of O.S. 16336/2000 for the same relief.

4. The 1st Petitioner got herself examined as PW-1. Two witnesses were examined as P Ws 2 & 3. Exs.P-1 to P-11 were marked. For the Respondents, No. evidence was adduced. The Court raised the following points for consideration:

1. Is it a fit and proper case to condone delay of 20 years, in filing restoration petition, as prayed u/s 5 of the Limitation Act?

2. Whether Petitioners have made out sufficient grounds, to restore the suit by exercising discussion under Order 9 Rule 9 of C.P.C?

3. What Order?

5. The learned Trial Judge, upon appreciation of the record of the case, has held that, the delay of 7417 days cannot be condoned. Even on merits of the case, the learned Trial Judge did not find material for granting of the relief. Consequently, I.A. 1 and the petition were dismissed. This appeal is directed against the said order.

6. Sri B.V. Gangi Reddy, Learned Counsel appearing for the Appellants/ Petitioners, contended that, the learned Trial Judge has not considered the case of the Petitioners in the correct perspective and the appreciation of the materials placed on record is wholly erroneous and since sufficient cause has been shown, the delay ought to have been condoned and the Misc.case allowed, so that the suit could have been tried and decided on its merit

7. Sri Vivek K. Chandy, Learned Counsel appearing for the Respondents, on the other hand contended that, the suit was dismissed for default on 22.08.1979. To set-aside the said order, Misc. petition was filed on 17.12.1999, after more than 20 years without making out sufficient cause for condonation of inordinate delay. Learned Counsel submitted that, the Court below has correctly appreciated the record of the case and its findings and conclusion being justified, No. interference in the matter is called for.

8. In view of the rival contentions and the record of the case, which I have perused, the point for consideration is:

Whether any interference with the impugned order is called for ?

9. The first question to be considered is, whether sufficient cause has been made

out for condonation of delay of 7417 days in filing the Misc. petition?

10. I.A. 1 filed in the Misc. case having been opposed by the Respondents, it is obligatory upon the Petitioners/Appellants to show sufficient cause, due to which, they were prevented from filing the Misc. case within the prescribed period. According to the Appellants, the reasons for delay were:

1. There was proposal for settlement of matter by the Respondents, and
2. one of the Petitioner, Mrs. Sarah Katherine Joseph, whose promise of extending financial assistance having not come true.

Evidence placed by examination of P Ws 1 to 3 is in tune with the said pleading.

11. The case put forth by the Petitioners is hard to believe. The period between the date of dismissal of the suit and filing of Misc. case is more than 20 years. None can be expected to wait for 20 years for settling of a matter, which had reached the Court and even the case had been dismissed. The financial difficulty sought to be made out, is totally bald. The case as put forth by the Petitioners/Appellants is only make believe and not credible. The Appellants were totally callous and have acted irresponsibly and even with negligence, as they could not have kept quiet for settlement of the matter for a period of more than 20 years after dismissal of the suit.

12. It is trite that, law of limitation is a substantive law and has definite consequences on the right and obligations to parties. Once a valuable right has accrued in favour of one party as a result of failure of other party to explain the delay by showing sufficient cause, it is unreasonable to take away the right without sufficient cause being made out. In the instant case, more than 20 years has elapsed between the date the suit was dismissed and the Misc. case seeking restoration of the case was filed. Neither in the affidavit filed in support of I.A. 1 nor in the evidence of P Ws 1 to 3, there are details with regard to the alleged acts of settlement between the parties. The affidavit lacks particulars and the evidence of P Ws 1 to 3 is not credible.

13. The Court below has examined the case in the correct perspective and there being correct appreciation of record, the findings recorded cannot be termed as perverse or illegal. In the circumstances, No. case is made out for Interference.

In the result, the appeal being devoid of merit is dismissed.

Parties to bear their respective costs.