

(2015) 11 KAR CK 0026

In the Karnataka High Court

Case No : R.P. No. 265/2006 in L.R.R.P. No. 57/1998

Muthavva P.

APPELLANT

Vs

Land Tribunal and Others

RESPONDENT

Date of Decision : 13-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 22 Rule 9, Order 47 Rule 1
Karnataka Land Reforms Act, 1961 — Section 121A
Limitation Act, 1963 — Section 5

Citation : (2015) 11 KAR CK 0026

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : Sarojini Mutthanna, Advocate, for the Appellant; T.S. Mahantesh, AGA, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—This review petition is filed seeking review of the order dated 29.03.2014 passed by this Court IN L.R.R.P. No. 57/98. There is delay of 797 days in filing the Review Petition.

2. There is delay of 7453 days in filing the application to bring the legal representatives of deceased respondent No. 2 on record. I have heard the learned counsel for the petitioner on the applications filed and as also on the merits of the case.

3. As can be seen from the order under review, the revision petition under Section 121A of the Karnataka Land Reforms Act had been filed challenging the order of the Appellate Authority (Land reforms) dated 07.05.1987 by one P. Muthawwa, mother of the review petitioner. Indeed, Smt. P. Muthawwa had died on 12.10.1991. The revision petition was filed during the year 1989 which was numbered as F.R. No. 1562/1989 on account of defective filing. Later on, Gangavva the present review petitioner filed an application dated 28.07.1998 under Order 22 Rule 3 CPC along with an application under Order 22 Rule 9 CPC

for coming on record as legal representatives after setting aside abatement. One more application was filed for condonation of delay invoking Section 5 of the Limitation Act. As 2nd respondent had also died, she had filed separate application to bring the legal representatives of deceased 2nd respondent on record. Proposed legal representatives of deceased 2nd respondent had filed objections to the applications contending that the review petitioner herein had come up with incorrect facts and the statements made in the affidavit did not constitute sufficient cause for condoning such inordinate delay.

4. Based on the applications and the objections, this Court considered the question whether the review petitioner herein had made out sufficient cause for condoning the delay in filing the application for setting aside abatement and to bring the legal representatives on record. This Court after hearing both parties and on perusal of the contents of the affidavit and objections, has come to the conclusion that no sufficient cause had been made out for condoning the delay and allowing the application filed to bring the legal representatives of deceased revision petitioner Smt. P. Muthawwa and also to bring the legal representatives of deceased 2nd respondent on record by setting aside abatement. This Court has assigned detailed reasons to come to the said conclusion. It is this order that is sought for being reviewed.

5. Reasons assigned in the order disclose that applicant had knowledge of death of Biddappa - the original 2nd respondent whose house was situated very close to the house of late petitioner - P. Muthawwa; that the family properties of both parties were situated adjacent to each other divided by a stream in between; that when Biddappa died, all the family members including the review petitioner attended his funeral and indeed the brother of review petitioner had also attended the funeral; that the news of death of Biddappa had appeared in local daily and also weekly magazine published in Kodava language by name "Bramagiri"; that as asserted by the respondents, share of the property of review petitioner was situated in the midst of the properties of the family members of Biddappa and she quite often visited her share of property and for which purpose she had to pass through a road lying just in front of the house of Biddappa. In the circumstances, taking note of lapse on the part of Gangavva - review petitioner in making necessary application in time to come on record as legal representative of petitioner and also to bring the legal representatives of deceased 2nd respondent on record, this Court has come to the conclusion that there was no justification to allow the two sets of applications. Accordingly, the applications have been dismissed.

6. Learned counsel appearing for the review petitioner contends that as the review petitioner had been allowed to represent the revision petition and the application filed by her to condone the delay in re-filing the papers had been allowed, on the same process of reasoning her application to come on record as legal representative of deceased revision petitioner - P Muttawwa and the other set of application to bring the legal representatives of deceased respondent No. 2

on record ought to have been allowed.

7. I do not find substance in this contention. This Court has taken note of the lapse on the part of applicant to move the applications not only to bring herself on record as legal representative of deceased P. Muttawwa but also to bring the legal representatives of deceased 2nd respondent on record. The Court has considered the explanation offered and has found that no sufficient cause had been made out to condone the delay and entertain applications. Elaborate reasons are assigned in support of the conclusion reached.

8. I do not find any apparent illegality in the order passed so as to enable this Court to exercise the power and jurisdiction vested under Order 47 Rule 1 CPC to review the order. Hence, the review petition being devoid of merit is dismissed. Consequently, I.As. 1 to 4/12 filed seeking to bring the legal representatives of deceased 2nd respondent on record by condoning the delay and setting aside abatement are also dismissed. I.A. 1/2006 filed for condoning the delay in filing the Review Petition is liable to be dismissed as no sufficient cause has been made out to condone the delay. It cannot be lost sight that if after such long lapse of time the matter is entertained, it will prejudicially affect the respondents because it will unsettle the settled things over the past several years.

Hence, the I.A. filed for condoning the delay is also dismissed.