

(2013) 09 KAR CK 0276

In the Karnataka High Court

Case No : Regular First Appeal No. 809 of 2009 (DEC and INJ)

Smt. Bhagyalakshmi and Others

APPELLANT

Vs

S.M. Ramachandra and Others

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2013) 6 KarLJ 578

Hon'ble Judges : L. Narayana Swamy, J

Bench : Single Bench

Advocate : P.V. Kalpana, for the Appellant;

Judgement

L. Narayana Swamy, J.—The appellants are the defendants in O.S. No. 6708 of 1997. Being aggrieved by the impugned judgment and decree dated 16-12-2003 passed by the XXVII Additional City Civil Judge, Bangalore, this appeal is filed seeking to set aside the impugned judgment and decree. The above suit is filed by the respondent/plaintiffs 1 and 2 and the same came to be decreed by judgment dated 16-12-2003. There is a delay of 1983 days in filing and in support of the same condonation application is filed u/s 5 of the Limitation Act, 1963.

2. Learned Counsel for the appellants submits that their mother late Lakshmamma had executed a Will dated 17-12-1086 bequeathing the suit property in their favour. The said Will was registered in the Office of the Sub-Registrar, Srirampura. After her death, the appellants filed an application for transfer of katha at the Corporation Office and the katha was transferred in their name.

3. The respondent/plaintiffs who filed the suit referred above challenged the execution of Will in favour of the appellants. After service of notice on them, husband of the first appellant participated in the suit proceedings and he died in the year 2001. After his death, the appellants could not follow-up the case as none of them were aware of neither the Advocate nor the case number. In fact

they tried their level best to track the same but it was in vain. In view of this, there is a delay which is explained to the satisfaction of the Court. Hence, it is to be condoned. The proceedings and its disposal were not noticed by the appellants, hence they were kept quiet and disposal of the suit was noticed only in the month of July 2009. In the month of July 2009, the respondent-Corporation cancelled the katha standing in their name on the basis of the judgment and decree. Thereafter, steps have been taken to file this appeal. Hence, the appellants may given an opportunity to defend their case before the Court below and delay may be condoned by allowing the application for condonation of delay.

4. The respondents are served. They filed objections to the delay application. In support of the same, learned Counsel for the appellants placed reliance on the judgment of Rajasthan High Court in between Trilok Chand Saini Vs. State and Others, , wherein it is held that:

Length of delay is no matter--Acceptability of explanation is only criterion--Explanation not smacking of dilatory strategy--In every case of delay there can be some lapse on part of litigant concerned--That alone, not sufficient to short down plea of condonation and turn door against litigant.

Respondents served the objection to this application.

5. From the above, it is found that the appellants were the defendants and filed a common written statement alleging that the suit schedule property was purchased by their mother, it was the self-acquired property and defence was taken by the defendants. On the basis of the pleadings, the Trial Court framed the issues, of which issue No. 4, which reads as under:

Whether the defendants 1 to 3 prove that deceased Smt. Lakshmamma executed a valid Will bequeathing the schedule property in their favour?

6. The said issue was answered in the negative. Thereafter records were examined. Except filing the written statement, the defendants have not filed any document to prove their case. Even then learned Judge while answering issue No. 4 examined issue Nos. 3 and 4 and answered in the negative. Affidavit filed by the first appellant to that effect, her husband died in the year 2001 and thereafter none of the appellants were informed about the proceedings. It is not stated in the affidavit of the appellant that her husband was only looking after the case and it is also stated as to how the appellants 2 and 3 participated in the proceedings. The husband of the first appellant died in the year 2001, whereas the suit was disposed of on 16-12-2003. For all these three years what steps have been taken is not explained. In para 5 of the affidavit it is only stated that her husband died in the year 2001, no particular dates have been furnished. Hence, I find the reasons assigned in paras 5, 6 and 7 is not satisfactory to the Court. It is found that even after 4 years no steps are taken before this Court to take the matter for admission and hearing. It shows that the appellants were not diligent before the Court below as well as before this Court. Hence, the reasons

assigned in the affidavit filed in support of Misc. Cvl. No. 15179 of 2009 for condonation of delay is not acceptable. Accordingly, the same is rejected. Subsequently, Misc. Cvl. Nos. 15180 and 15181 of 2009 filed for production of additional documents and stay respectively also stand rejected. Consequently, this appeal is liable to be rejected.

Accordingly, this appeal is rejected.