

2019 (1) ALT(TS and AP) 788 (S.B.)

IN THE HIGH COURT FOR THE STATE OF TELANGANA

D.V.S.S.SOMAYAJULU, J.

C.R.P. No 4299 of 2006

DECIDED ON : 31-12-2018

Smt. Ghouseai Begum and another Vs. Joint Collector, Ranga Reddy District and others

HEAD NOTE

CIVIL PROCEDURE CODE, 1908, Section 115 Condonation of Delay Separate Application Communication of Order Limitation Valuable Rights in Land De-novo enquiry ordered Whether in the facts and circumstances of the case, the order passed by the Joint Collector is correct or not The appeal was dismissed essentially on the ground of limitation HELD, order dated 27.11.1993 passed by the Mandal Revenue Officer is passed against a dead person and is therefore, a nullity Knowledge cannot be directly attributed to the revision petitioners unless they are actually served with a copy of the order When the grounds of appeal itself point out or make it a case for condonation, the Courts have held that there is no need for separate application for condonation of delay It clear that unless and until there is only communication of an order, limitation does not began to run Valuable rights in the land are involved, the order passed by the Joint Collector is to be set aside Joint Collector-II, who passed the impugned order, is directed to take up a de-novo enquiry of the appeal filed by the revision petitioner The Civil Revision Petition is allowed and the Joint Collector is directed to dispose of the appeal.

QUOTABLE POINT

Quotable points: (1) Knowledge Knowledge cannot be directly attributed to the revision petitioners unless they are actually served with a copy of the order.

(2) Separate application for condonation of delay When the grounds of appeal itself point out or make it a case for condonation, the Courts have held that there is no need for separate application for condonation of delay.

(3) Communication of an order It clear that unless and until there is only communication of an order, limitation does not began to run.

ADVOCATES

Mr. MUDDU VIJAY and Mr. K.Raghuveer Reddy, Counsel for the Petitioners. Mr. P.Ravi Shankar, Mr. B.Chandrasen Reddy and Mr. G.Simhadri, Counsel for the Respondents.

CASES REFERRED

1. 1999 (1) ALT 327 - Movva Anjamma Vs. Abhineni Anasuya
2. 2008 15 SCC 105 - Kamal Krishan Rastogi Vs. State of Bihar
3. 2008 12 SCC 353 - Ganpatbhai Mahijibhai Solanki Vs. State of Gujarat
4. 2009 (5) ALT 187 - K.Naveen Kumar Vs. M.Suresh Babu
5. 2010 12 SCC 159 - Bhagmal Vs. Kunwar Lal

6 . 2013 (1) ALT 257 - D.Tara Bai Vs. Government of Andhra Pradesh rep., by its Secretary, Revenue (UL.II) Department

7 . 2014 2 SCC 720 - Madan Vs. State of Maharashtra

8 . 2017 (4) ALT 507 - J.Veeraiah Vs. Indian Overseas Bank, rep., by its Assistant Recovery Management Branch, Hyderabad

ORDER

This revision petition is filed questioning the order dated 06.06.2006 in case No.F2/2236/2001 on the file of Joint Collector, Rangareddy District, Hyderabad.

2. The case has a long and chequered history. The impugned order dated 06.06.2006 was passed by the Joint Collector dismissing an appeal by the revision petitioners herein questioning the orders dated 27.11.1993 passed by the Mandal Revenue Officer, Hayathnagar, Ranga Reddy. The appeal was dismissed essentially on the ground of limitation.

3. This Court has heard Sri **MUDDU VIJAY** and K.Raghuveer Reddy, learned counsel for the petitioners and Sri P.Ravi Shankar, Sri B.Chandrasen Reddy and G.Simhadri, learned counsel for the respondents.

4. Learned counsel for the petitioners took a lot of pains to take the Court through a number of documents. He points out and argues that the grounds of appeal that are filed are very important and the same are not at all considered by the Joint Collector. He points out that their case is that the revision petitioners did not receive any notice of the order dated 27.11.1993 which is challenged before the Joint Collector. Counsel also points out that fraud was propounded and that N.Jagan Reddy, who appeared for Mohd. Ibrahim was not instructed to appear in the case at all. It is also pointed out that Mohd. Ibrahim was admitted into hospital on 15.10.1993 and he died on 20.10.1993. The counsel also points out that the alleged surrender of land by Mohd. Ibrahim as a protected tenant did not take place as alleged and that somebody has impersonated Mohd. Ibrahim. Learned counsel also submits that Mohd. Ibrahim died on 20.10.1993. Legal representatives of Mohd. Ibrahim were not put on notice of the case. The legal representatives were not even examined.

5. In addition, learned counsel for the respondents submitted that Mohd. Ibrahim died on 29.10.1993. The order dated 27.11.1993 passed by the Mandal Revenue Officer is passed against a dead person and is therefore, a nullity. Counsel also submits that in the earlier order passed by the Mandal Revenue Officer in proceedings in File No.2255/1989 dated 16.01.1989 the Office noted surrender only for the land ad measuring Ac.7.00 guntas leaving out Ac.1.38 cents of land which is currently in issue. The counsel therefore submits that all these issues have not been considered at all by the Joint Collector. Counsel relies upon the following case law to buttress his submissions on the points raised-*Movva Anjamma v. Abhineni Anasuya* (1) 1999 (1) ALT 327, *Bhagmal v. Kunwar Lal* (2) (2010) 12 SCC 159, *K.Naveen Kumar v. M.Suresh Babu* (3) 2009 (5) ALT 187 = 2009 (4) ALD 738, *Madan v. State of Maharashtra* (4) (2014) 2 SCC 720, *J.Veeraiah v. Indian Overseas Bank, rep., by its Assistant Recovery Management Branch, Hyderabad* (5) 2017 (4) ALT 507 (D.B.), *Kamal Krishan Rastogi v. State of Bihar* (6) (2008) 15 SCC 105, *D.Tara Bai v. Government of Andhra Pradesh rep., by its Secretary, Revenue (UL.II) Department* (7) 2013 (1) ALT 257 and *Ganpatbhai Mahijibhai Solanki v. State of Gujarat* (8) (2008) 12 SCC 353. Written synopsis was also filed by the petitioners in support of their contentions.

6. In reply thereto, learned counsel for the respondents argued that the application is filed with an inordinate delay of more than seven (7) years. He also submits that no application has been filed to condone the delay and therefore, the Joint Collector was right in rejecting the application on the ground of limitation. He submits that once the ground of limitation was held to be proved, the other grounds do not survive for consideration. Learned counsel also submits that Mohd. Ibrahim

surrendered Ac.1.38 guntas of land in favour of Kavitha Muthwani on 27.11.1993. He also submits that the legal heirs of Mohd. Ibrahim appeared before the Joint Collector and admitted this fact of surrender. Therefore, it is his contention that once the legal heirs have admitted the surrender of land in favour of Kavitha Muthwani, nothing further survives for consideration. Therefore, he prays that the revision should be dismissed.

7. The point for consideration is, whether in the facts and circumstances of the case, the order passed by the Joint Collector is correct or not.

8. This Court notices that the grounds of appeal, which are filed, raise quite a few series of issues. Some of the issues are also touched upon in the introductory part of the order. However, ultimately, the impugned order came to be passed relying upon the question of limitation only.

9. This Court notices that knowledge cannot be directly attributed to the revision petitioners unless they are actually served with a copy of the order. The Joint Collector could have easily summoned the records to verify whether the statement made by the parties that they were never served with a copy of the order was correct or not. He did not choose to do so. In addition, when the grounds of appeal itself point out or make it a case for condonation, the Courts have held that there is no need for separate application for condonation of delay. In *Movva Anjamma's case* (1 supra) and *Bhagmal's case* (2 supra), a single Judge of this Court and the Hon'ble Supreme Court held that even a separate application is not filed for condonation of the delay and if the grounds made out explain the causes for the delay, the same can be condoned. In addition, the other two cases cited by the learned counsel for the revision petitioner namely, *K.Naveen Kumar* (3 supra) and *Madan's case* (4 supra) make it clear that unless and until there is only communication of an order, limitation does not began to run. This aspect is also not considered by the Joint Collector while passing the impugned order.

10. In addition to the same, the other cases cited by the learned counsel for the petitioners that the order passed against a dead person is a nullity; also raises an important questions that had to be decided. Last, but not the least, the question of fraud is also raised and passionately argued. As has been held by the Supreme Court in a number of decisions, fraud vitiates every transaction. Even the most solemn judicial act will be undone if fraud is proved. In the case on hand, there will series of allegations of fraud being played of impersonation etc. These had to be checked, verified and decided upon.

11. This Court is therefore of the opinion that as valuable rights in the land are involved, the order passed by the Joint Collector is to be set aside. The Joint Collector-II, Ranga Reddy, who passed the impugned order, is directed to take up a de-novo enquiry of the appeal filed by the revision petitioner. A thorough investigation into all the facts that are raised namely limitation, fraud order being passed against a dead person etc., should be conducted in a time bound manner. An opportunity is to be given to both parties to appear in the hearing and to prove their respective conditions. Request for adjournments should be dealt with strictly and in accordance with law.

12. Therefore, the Civil Revision Petition is allowed and the Joint Collector is directed to dispose of the appeal filed on both issues of fact and law within a period of six months from the date of receipt of a copy of this order, but without in any way being influenced by what is stated by this Court. No order as to costs.

13. As a sequel, miscellaneous petitions, if any, pending in this revision shall stand closed.