

**THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU**

**C.R.P.No.1244 of 2022**

**ORDER:**

The second petitioner in this revision petition is wife of one I.Mohan Reddy, who is shown as first petitioner and petitioner No.3 is son of petitioners No.1 and 2. The said I.Mohan Reddy has filed a suit in O.S.No.74 of 2005 before the XII Addl. District Judge, Ranga Reddy District against M.Soma Raju (defendant in O.S.No.74 of 2005) for the relief of specific performance of sale deed dated 08-04-2005. The defendant resisted the claim, filed his written statement and the trial Court framed issues and proceeded with the trial.

2. The said Mohan Reddy filed his evidence affidavit on 22-10-2007. He was examined in further chief on 01-11-2007 and he got marked Exs.A1 to A3. The cross-examination of PW.1 was deferred at the request of defendant. The defendant has filed two petitions vide I.A.No.38 of 2008 and I.A.No.39 of 2008. I.A.No.38 of 2008 was filed with a prayer to de-exhibit Ex.A1 and the trial Court disposed the petition on merits on 17-03-2008 and allowed the prayer of defendant, and the other petition vide I.A.No.39

of 2008 was filed by the defendant with a prayer to defer the cross-examination of PW.1 till the plaintiff pay the deficit Court fee and stamp duty of Ex.A1. The said petition was allowed and cross-examination of PW.1 was deferred.

3. It appears from the record that later the suit was dismissed for default on 26-10-2009. Subsequently, the petitioners herein have filed a petition before the trial Court on 16-03-2022 in I.A.No.302 of 2021 under Section 5 of Limitation Act and submitted that the plaintiff Mohan Reddy died on 09-09-2012 and they were not aware of the said suit, thereby, they could not take steps to bring the legal heirs on to the record thereby, they sought for condoning the delay for 4162 days in filing petition to bring the suit to file. The trial Court dismissed the petition on 16-03-2022.

4. Aggrieved by the dismissal of their petition in I.A.No.302 of 2021, the petitioners herein have filed the present revision. In the grounds of revision, the petitioners have claimed that the trial Court failed to appreciate the probability, proportionality and reasonableness of the case thereby, came to an erroneous conclusion. The order of the trial Court is vitiated by various irregularities and surmises and not on any acceptable evidence on record. The petitioners

have claimed that the husband of petitioner No.2 filed suit for specific performance. The Court below ought to have considered the sale deed which is marked as Ex.A1 wherein, the entire sale consideration was paid to the respondent vide cheque dated 08-04-2005. The Court below ought to have considered that the plaintiffs have paid Rs.3,05,140/- towards stamp duty in view of orders in I.A.No.38 of 2008. The Court below ought to have considered that time was granted for cross-examination of PW.1 but the husband of the second petitioner, who was suffering from health ailments, could not prosecute the suit which resulted dismissal of the suit for default. They have also claimed that Mohan Reddy used to look after the suit proceedings during his life time. The petitioners were not aware of the pendency of the suit. They were in utter shock due to the death of Mohan Reddy. The petitioners could not file restoration petition and they were not in a position to take steps for bringing legal heirs of Mohan Reddy which is neither intentional nor deliberate. According to the petitioners, the delay of 4162 days for filing restoration petition is not willful but due to the sufficient cause. The petitioner have relied on the judgment of the Hon'ble Apex Court in **"N.Balakrishnan Vs.**

***M.Krishnamurthy***,<sup>1</sup> wherein the Hon'ble Apex Court was pleased to observe that the law of limitation fixes a life span for such legal remedy for the redressal of the legal injury so suffered. Therefore, according to the petitioners, the trial Court committed gross error in dismissing the application, thereby, they sought for setting aside the order dated 16-03-2022.

5. The learned counsel for the petitioners has submitted that soon after the death of plaintiff, the second petitioner migrated to her native place i.e., Nellore along with her son, the third petitioner herein and who was suffering from mental ill health. She is not aware of her husband purchasing suit schedule property, obtaining an agreement of sale and about the suit filed by her husband. She came to know about the suit very recently. She rushed to Hyderabad and got the records verified, then only she came to know her husband has paid the entire sale consideration and purchased the suit schedule property. The learned counsel further argued that the petitioner could not take appropriate steps as they were not aware of the suit proceedings. If the petition is not allowed, they would suffer irreparable loss thereby,

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<sup>1</sup> 1988 (7) SCC 123

sought for setting aside the order of the trial Court and for permission to the petitioner to proceed with the suit.

6. The petition is filed under Section 5 of Limitation Act. The petitioners are under obligation to explain each day's delay to seek the relief of restoration. The petitioners have filed the present application solely on the ground that the third petitioner is suffering from ill health, and the second petitioner was not aware of her husband purchasing the property filing suit and as they migrated to Nellore soon after the death of her husband Mohan Reddy.

7. A notice before the admission was directed and the learned counsel for the petitioner filed a memo along with track report from postal department to show that the respondent/defendant was served with the notice. No body represented the respondents before this Court.

8. In view of the above contentions, I have to see whether the petitioners are able to explain the delay in a proper way. As per the entire record placed before this Court, it is very clear that the suit referred above was filed on the basis of an agreement of sale supposed to have been executed by the respondent/defendant.

9. Now the point for consideration is :

Whether the petitioners are liable to explain the delay of 4162 days, if so, whether their request to condone inordinate delay be allowed ?

10. As per the plaint in O.S.No.74 of 2005, the plaintiff Mohan Reddy specifically claimed that the defendant, who was owner of Ac.07-05 gts of land in Chilkur Village offered the property for sale and plaintiffs agreed to purchase the same for Rs.26,52,500/-. The plaintiffs have claimed that he has paid the entire sale consideration by way of a cheque on the same day and he has obtained sale deed from the defendant on a non-judicial stamp paper worth of Rs.100/-. The plaintiff has claimed that the defendant executed alleged un-registered sale deed on 08-04-2005 itself and affixed his thumb impression. It was the further case of plaintiff that when he was ready to obtain registered sale deed, the defendant avoided the registration. Therefore, he filed the suit and sought for specific performance.

11. The defendant made his appearance before the trial Court, filed written statements, disputing all the plaint averments including the alleged sale, receipt of entire sale consideration, execution of unregistered sale deed, passing of

receipt etc., According to the statement, it was his specific case that he never alienated the property to the plaintiff. He was kidnapped by the plaintiff and his men. They forced him to sign on some documents and he was brought to Hyderabad on the early hours of 07-04-2005. Since he did not return to the village till the morning, his village members made enquiry and they lodged a complaint at police station, Palakol Rural on 08-04-2005. A case was registered against Vinod Reddy and Paruchuri Suman since then they were absconding. It was also alleged in the written statement that they abducted and threatened him with knives and swords. He was made to sign sale deed dated 08-04-2005 under the coercion and threat, thereafter, taken to Syndicate Bank, Hyderabad where he was forced to open an account in the Bank. He was made to sign cheque book in the presence of the Bank Manager. Therefore, at no point of time, he sold the property to the plaintiff and he never received any consideration. The defendant has categorically pleaded that plaintiffs are strangers to him.

12. The record further shows that on the basis of complaint filed by the family members of defendant, a case was registered and subsequently, the accused therein were acquitted.

13. According to the material averments of the plaint and written statement, it was the case of plaintiff that he has purchased an extent of Ac.07.05 gts by paying more than 26 Lakhs under an un-registered sale deed dated 08-04-2005. According to the defendant, he did not receive any such consideration, he was forced to sign on documents and forced to open a Bank account and his signatures were obtained on the cheque book. Whatever may be the allegations in the plaint and written statement, it is the case of the plaintiff that he purchased vast extent of more than 7 acres by paying 26 Lakhs to the owner of the property. In 2005, the consideration of Rs.26 Lakhs and odd is not a small amount. The claim of petitioner No.2 who is no other than wife of plaintiff that she is not aware of her husband purchasing land property, paying 26 Lakhs and odd is highly un-believable. No prudent person would hide a purchase of landed property from his wife because it involves funds of more than 26 Lakhs. Therefore, the contention of petitioner No.2 that she is not aware of the purchase of land obtaining sale of agreement is not believable. In addition to this, the record would show that criminal case was registered alleging that the defendant was abducted to obtain his signatures on some documents.

14. As per the written statement, it is alleged that soon after a complaint was filed about the kidnap of respondent/defendant the said Mohan Reddy and others absconded fearing arrest by police. In the evidence affidavit, PW.1 i.e., Mohan Reddy has stated that the defendant got registered a false complaint against him and others but the case ended in acquittal vide judgment dated 17-10-2007. Therefore, the claim of petitioners that they are not aware of suit transaction is absurd. Since Mohan Reddy is shown in the criminal case it may not escape the attention of his wife and it is quite natural for the wife to enquire and know the details.

15. The petitioners could not file any record before the Court that petitioner No.3 is suffering from mental ill health and soon after the death of plaintiff, they migrated to Nellore. They did not furnish any address where they are staying for all these more than 4000 days. Therefore, the contention of the petitioners that they are not aware of the purchase of land and payment of Rs.26 Lakhs and odd thereby, they could not file petition within time cannot be accepted. It may be true that the defendant did not challenge the petition filed by the petitioners before the trial Court and he did not choose to appear before this Court. In the light of

what he has averred in the written statement, he might have apprehended danger to his life. It is for the petitioners to explain the delay of 4162 days with cogent reasons. I am unable to accept the claim of petitioners that said Mohan Reddy did not inform his wife that he purchased such a huge extent of property by payment of more than 26 Lakhs. Therefore, I am not accepting the contention of the petitioners. The delay of 4162 days is not explained as such, the reason is liable to be dismissed.

16. In the result, the petition is dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

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**JUSTICE SAMBASIVA RAO NAIDU**

18<sup>th</sup> July, 2022.

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