

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION Nos.3079 and 3493 of 2014

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COMMON ORDER:

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These two Revisions arise out of the same suit between the same parties. Therefore, these are disposed of by this common order.

2. The 1st respondent herein filed a suit for partition of 'A' and 'B' schedule properties into two equal shares and for allotment of one such share to her against 3rd respondent and petitioner.

3. Preliminary decree in the said suit was passed on 23-04-1999.

4. I.A.No.53 of 2013 was filed under Order XX Rule 18 C.P.C. to pass a final decree in terms of the preliminary decree.

5. Final decree petition I.A.No.53 of 2013 was allowed on 11-07-2014.

6. In the cause title in the order in the said I.A.No.53 of 2013, the 2nd respondent herein was shown as the legal representative of both the 1st respondent and 3rd

respondent. According to the said cause title, the 2nd respondent had been impleaded as legal representative of 1st respondent vide order dt.28-06-2013 in I.A.No.104 of 2013 and as legal representative of 3rd respondent vide order dt.28-06-2013 in I.A.No.141 of 2013.

7. Although in I.A.No.141 of 2013, the 2nd respondent claimed that 3rd respondent Venkayamma was his mother and she died on 26-10-2004 and that he should be impleaded as her legal representative, that application was opposed by petitioner contending that Venkayamma had executed a registered Will dt.17-05-1994 with the Sub-Registrar Office, Pedakurapadu and therefore he is her legal heir and not the 2nd respondent.

8. By order dt.28-06-2013, the Court below passed a cryptic order in I.A.No.141 of 2013 as if the said application was filed to add the 2nd respondent as legal heir of the deceased 1st respondent (instead of 3rd respondent) without even referring to the opposition by petitioner for treating the 2nd respondent as the legal representative of the deceased 3rd respondent.

9. Challenging the same, C.R.P.No.3079 of 2014 was filed by petitioner.

10. The principal contention of the learned counsel for petitioner in C.R.P.No.3079 of 2014 is that not only has the Court below mistook I.A.No.141 of 2013 as an application to implead the 2nd respondent as legal representative of the 1st respondent instead of 3rd respondent, it had also not passed any reasoned order except stating “heard both sides. The petition is allowed on payment of costs of Rs.150/-. Costs paid. Petition is allowed.”

11. The learned counsel for 2nd respondent, on the other hand, vehemently contended that the claim of petitioner that he is the legal heir of 3rd respondent cannot be accepted, but he does not dispute the fact that while dealing with I.A.No.141 of 2013, the Court below mistook the said application as an application to bring on 2nd respondent on record as legal representative of the 1st respondent instead of 3rd respondent.

12. Therefore, the order dt.28-06-2013 in I.A.No.141 of 2013 deserves to be set aside on both counts: (a) that the Court below mistook the said I.A. as an application to implead the 2nd respondent as the legal representative of the 1st respondent instead of 3rd respondent and (b) also on the ground that it did not advert to the objections raised

by petitioner on the basis of the Will dt.17-05-1994 allegedly executed in his favour by 3rd respondent and for not giving any reasons why the application filed by 2nd respondent deserves to be allowed.

13. Although the learned counsel for 2nd respondent has also raised a contention that the Revision has been filed belatedly in September, 2014 challenging the order passed on 28-06-2013 in I.A.No.141 of 2013, I am of the considered opinion that no period of limitation has been fixed for filing Revisions under Article 227 of the Constitution of India as held by a Division Bench of this Court in **Gurram Satyaseshamamba @ Gurram Satya Santamani and Ors Vs. Gurram Krishnavenamma (died) by LRs. and Ors.**^[1], and since the order passed by the Court below is *prima facie* unsustainable by being an unreasoned order and also because it did not correctly understand why the said application was filed, the Revision cannot be dismissed on the ground of alleged laches on the part of petitioner.

14. Therefore, C.R.P.No.3079 of 2014 is allowed and the order
dt.28-06-2013 in I.A.No.141 of 2013 in I.A.No.1627 of 2004 in O.S.No.181 of 1987 of the Senior Civil Judge, Sattenapalli is set aside and the said I.A. is allowed, and

the Court below is directed to reconsider I.A.No.141 of 2013 and deal with the objections raised by petitioner for the impleadment of 2nd respondent and pass a reasoned order in accordance with law as prescribed under Order XXII Rule 5 C.P.C. No costs.

15. Coming to C.R.P.No.3493 of 2014, this Revision is filed challenging the docket order dt.25-09-2014 in E.P.No.82 of 2014 in O.S.No.181 of 1987 on the file of the Senior Civil Judge, Sattenapalli, Guntur District.

16. The petitioner herein is 2nd J.Dr. As stated above, final decree had been passed in I.A.No.53 of 2013 on 11-07-2014 in O.S.No.181 of 1987. This Court had pointed out in the earlier part of this order that 2nd respondent had been impleaded as legal representative of 3rd respondent in I.A.No.141 of 2013 without considering the objections raised by petitioner to such impleadment and this Court had set aside the order dt.28-06-2013 in I.A.No.141 of 2013 in C.R.P.No.3079 of 2014 referred to above. Once the said order is set aside and I.A.No.141 of 2013 is restored to the file of the Senior Civil Judge, Sattenapalli, the order dt.11-07-2014 in I.A.No.53 of 2013 i.e. Final Decree Petition, which is dependent on the order dt.28-06-2013 in I.A.No.141 of 2013 automatically stands set aside and I.A.No.53 of 2013 also stands restored to

the file of the Senior Civil Judge, Sattenapalli. Once the Final Decree is set aside, it cannot be executed.

17. Therefore, the docket order dt.25-09-2014 in E.P.No.82 of 2014 in O.S.No.181 of 1987 of the Senior Civil Judge, Sattenapalli also stands set aside. Consequently, C.R.P.No.3493 of 2014 is also allowed. No costs.

18. The Senior Civil Judge, Sattenapalli is directed to decide I.A.No.141 of 2013 in I.A.No.1627 of 2004 in O.S.No.181 of 1987 on his file within a period of eight (08) weeks from the date of receipt of a copy of this order.

19. As a sequel, miscellaneous petitions pending if any, in these Revisions, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 21-08-2015
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[\[1\]](#) 2004(4) ALT 722