

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

CIVIL REVISION PETITION NO.1566 OF 2015

Between:

Bale Venkateswarlu (died)
and another.

... Petitioners

and

Paralamma Temple, represented by its
President – Nepal Vishnu Murthy,
and others.

... Respondents

SUBMITTED FOR APPROVAL:

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DATE OF JUDGMENT PRONOUNCEMENT : 31st JULY,
2015

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether their Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1566 OF 2015

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 08.10.2014 passed by the learned I Additional Junior Civil Judge, Bhimavaram, in I.A.No.143 of 2014 in O.S.No.71 of 2013. The said I.A. was filed by the daughter of the first plaintiff in the suit under Order 22 Rule 3 CPC. According to her, her father died on 27.12.2013 and she was the sole legal representative. She therefore sought to be brought on record as the third plaintiff in the suit.

The 13th defendant in the suit, the 13th respondent in the IA, filed a counter contesting her claim stating that though a death certificate had been procured by her from the Attili Gram Panchayat to the effect that the first plaintiff in the suit had expired, it was not so. In this context, he alleged that the Secretary of the Attili Gram Panchayat had committed various irregularities. A complaint was stated to have been made against the said Panchayat Secretary, which was pending, and therefore, the death certificate issued by the said Gram Panchayat could not be acted upon. According to him, the first plaintiff suffered from mental imbalance and his whereabouts were unknown. He further stated that the first plaintiff also had a son by name Adinarayana and therefore, the daughter could not claim to be the sole legal representative.

By the order under revision, the trial Court took note of the contentions of both parties and allowed the petition subject to the condition that the daughter of the first plaintiff should file a legal heir certificate on or before 07.11.2014 and amend the plaint. Aggrieved by this condition, the daughter of the first plaintiff is before this Court by way of this civil revision petition.

Despite service of notice, none of the respondents chose to enter appearance before this Court either in person or through learned counsel.

Significantly, two points arose for consideration in the light of the counter filed by the 13th defendant in the suit - whether the first plaintiff had died and if so, who was/were his legal representative(s). As the petitioner herein claimed that the first plaintiff had died and that she was his sole legal representative, it was for her to establish the same. According to the 13th respondent, the first plaintiff had not expired and he also had a son. Surprisingly, the trial Court did not even put the said son on notice or undertake an enquiry as to the question as to who would be the legal representative(s) of the first plaintiff, if he had died. Order 22 Rule 5 CPC empowers the trial Court to determine the question as to whether any person is or is not the legal representative of a deceased plaintiff. Losing sight of this provision of law, the trial Court adopted a novel procedure of asking the petitioner to produce a legal heir certificate! It is not explained as to under which law and from whom the petitioner was to obtain such a legal heir certificate. The approach of the trial Court in this regard is therefore without legal foundation and cannot be sustained.

The order under revision is accordingly set aside and the matter is remitted to the trial Court for undertaking an enquiry under Order 22 Rule 5 CPC, after duly verifying the fact as to whether the first plaintiff in the suit had actually died.

The Civil Revision Petition is allowed to the extent indicated above. Pending miscellaneous petitions shall stand closed in the light of

this final order. No order as to costs.

SANJAY KUMAR, J

31st JULY, 2015
PGS