

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.3788 of 2014

ORDER:

This Civil Revision Petition is filed by the decree holders in E.P.No.3 of 2011 in O.S.No.81 of 1998 on the file of the Additional Senior Civil Judge, Chittoor, due to demise of some judgment debtors. The petitioners filed E.A.No.3 of 2011 to implead the respondents 5 to 7 as judgment debtors 5 to 7 in the execution petition being the legal heirs of the deceased 1st judgment debtor and respondents 8 to 10 as judgment debtors 8 to 10 being the legal heirs of the 3rd judgment debtor and permit them to carry out the amendment in the body of the execution petition. But, the said application was dismissed on 17.04.2014 by observing as follows:

“Admittedly, judgment debtor No.1 died in the year 2008 and judgment debtor No.3 died in the year 2005. The petitioners/decreed holders should have filed a petition to implead the legal representatives within 90 days as per Article 120 of the Limitation Act, 1963. If there is delay beyond 90 days, a petition under Section 5 of the Limitation Act has to be filed to condone the delay. But, as seen from the record, the petitioners have filed the petition under Section 151 of CPC to implead the L.Rs without filing a petition to condone the delay. As the petitioners/decreed holders have not filed the petition under Section 5 of the Limitation Act, this petition under Section 151 of CPC is not maintainable.”

The learned counsel for the petitioners relied on a decision in

Evuru Venkata Subbayya Vs. Srishti Veerayya and others^[1]

and submitted that in view of the provisions of Order 22 Rule 12 of C.P.C., the principle of abatement of decree does not apply to execution proceedings.

In view of the same, the impugned order passed by the learned Additional Senior Civil Judge, Chittoor, is set aside and the

matter is remanded to the lower Court for passing fresh orders, in accordance with law, at the earliest.

Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

Consequently, the interim order granted on 24.10.2014 is vacated and miscellaneous petitions, if any, pending in the civil revision petition shall stand dismissed.

(A.RAMALINGESWARA RAO, J)

18th December, 2015
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