

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

CIVIL REVISION PETITION No.817 of 2014

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ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.15-03-2013 in I.A.No.237 of 2013 in F.C.O.P.No.57 of 2007 of the V Additional District Judge, Tirupati.

2. The petitioners herein are two minors represented by their mother. They filed the above application under Order I Rule 10 CPC to implead themselves as respondent Nos.5 and 6 in the F.C.O.P.
3. The said F.C.O.P. was filed by respondent Nos.1 and 2 herein against the mother of petitioners and others for declaration that they are the legal heirs of the deceased P.Jayakrishna. The F.C.O.P. was filed under Section 7(1) Explanation (C) and (d) of the Family Courts Act, 1984 to declare that respondent Nos.1 and 2 are the rightful nominees (LRs) of the estate of deceased P.Jayakrishna, which is described in the schedules to the O.P.
4. In the affidavit filed in support of I.A.No.237 of 2013, the mother of petitioners contended that late P.Jayakrishna is her husband and petitioners herein were born during wedlock with him on 29-07-2004; that she is only legal and natural guardian of the petitioners; that petitioners are entitled to the death benefits of late P.Jayakrishna and they have a rightful share in the petition schedule properties. It is further contended that the petitioners are proper and necessary parties in the O.P., and they may be impleaded as parties in the O.P. to enable the Court effectually

and completely to adjudicate upon and settle all the questions involved in the case.

5. This application was opposed by respondent Nos.1 and 2, who contended that she had filed the O.P. to declare herself and 2nd respondent as nominees of the estate of the deceased; that she even gave evidence as P.W.1 and was cross-examined by the mother of petitioners; and when the matter was posted for adducing evidence of the mother of petitioners (who was 1st respondent in the O.P.), this application had been filed. It is contended that the application had been filed at a belated stage and if the petitioners had any right in the estate of the deceased, they have to seek their remedy before a competent Court, but not in the O.P.
6. By order dt.15-03-2013, the Court below dismissed I.A.No.237 of 2013 filed by petitioners. It held that if the O.P. is dismissed for the sake of argument, the petitioners herein would get a share through their mother and if it is allowed, they would lose and no prejudice or loss would be caused to them if they are not on record. It held that the petitioners cannot insist that they be impleaded as respondents in the O.P.
7. Questioning the same, this Revision is filed.
8. The learned counsel for petitioners Sri N.Pramod contended that in essence the O.P. is to declare the status of 1st respondent as the wife of late P.Jayakrishna; therefore since petitioners are the children of late P.Jayakrishna through their guardian/mother, who is impleaded as 1st respondent in the O.P., they would have a share in his estate. Assuming for the sake of argument without

admitting that mother of petitioners is not the lawfully wedded wife of late P.Jayakrishna, he contends that even then, in view of Section 16 of the Hindu Marriage Act, 1955, the petitioners would still get a share therein. He placed reliance on the judgment of the Supreme Court in **Razia Begum Vs. Sahebzadi Anwar Begum and others** and contended that if the subject matter of litigation is declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy. He further contended that the result of a declaratory decree on the question of status affects not only the parties actually before the Court, but generations to come, and in view of that consideration, the rule of 'present interest' as evolved by case law relating to disputes about property, does not apply with full force.

9. The learned counsel for respondents on the other hand contended that respondent Nos.1 and 2 are the *dominus litis* and against their will the petitioners cannot be impleaded. He further contended that the trial in the case had also commenced and if at this stage the petitioners are impleaded, grave prejudice would be caused to respondent Nos.1 and 2.
10. Admittedly, both the mother/guardian of petitioners and 1st respondent claimed that they were lawfully married to late P.Jayakrishna. The guardian of petitioners has in fact been impleaded as 1st respondent in the O.P. itself. The question as to who is the lawfully wedded wife of late P.Jayakrishna is a matter to be decided in the O.P. The issue in the O.P. is whether

respondent Nos.1 and 2 are the legal representatives of the estate of the deceased P.Jayakrishna. Thus, unlike in a litigation relating to property, the O.P. deals with the status or a legal character of respondent Nos.1 and 2 vis-à-vis the guardian of petitioners.

11. In **Razia Begum** (1 supra) the facts were somewhat similar to the present case. A suit was filed by a lady alleging to be the lawfully married wife of the second son of HEH of Nizam of Hyderabad. The plaintiff sought a declaration that she is the legally wedded wife of the defendant and also prayed for a relief that she be entitled to receive from the defendant a sum of Rs.2,000/- per month towards maintenance. 10 days after the suit was filed, defendant filed a written statement admitting her entire claim. But on that day, the respondent before the Supreme Court filed an application under Order I Rule 10 CPC on behalf of herself and her minor son also claiming to be a lawful and legally wedded wife of defendant and alleging that her minor son was the son of defendant. This application was opposed by defendant, but the trial Court allowed it. A Revision was preferred to the High Court of Judicature of Andhra Pradesh against the said order. The High Court confirmed the order of the trial Court. Questioning the same, the plaintiff approached the Supreme Court. The Supreme Court held that if a declaratory judgment is given by virtue of Section 43 of the Specific Relief Act, such a judgment is binding not only on the persons actually parties to the judgment but their privies also. It clarified that the question of addition of parties under Rule 10 of Order I CPC is generally not one of initial jurisdiction of the Court, but of judicial discretion which has to be exercised in view of all the facts and

circumstances of a particular case; but in some cases, it may raise controversies as to the power of the Court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in Section 115 CPC. It also held :

“13. As a result of these considerations, we have arrived at the following conclusions:

(1)

(2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigations;

(3) Where the subject-matter of the litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy.

(4) The cases contemplated in the last proposition have to be determined in accordance with the statutory provisions of sections 42 and 43 of the Specific Relief Act;

(5) In cases covered by those statutory provisions the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;

(6) The result of a declaratory decree on the question of status such as in controversy in the instant case affects not only the parties actually before the court but generations to come, and, in view of that consideration, the rule of 'present interest' as evolved by case law relating to disputes about property does not apply with full force; and

(7) The rule laid down in section 43 of the Specific Relief Act is not exactly a rule of res judicata. It is narrower in one sense and wider in another.”

12. In my opinion, the present case is covered by the above judgment since the question in the O.P. also is as to who are the lawfully wedded wife and children of late P.Jayakrishna. The

issue of status of parties is in question. It is thus a fit case to relax the rule of present and direct interest since this Court is of the opinion that by adding the petitioners, the Court below would be in a better position effectually and completely to adjudicate upon the above controversy in the suit.

I further hold that respondents/plaintiffs cannot take the plea that they are *dominis litis* and against their will the petitioners cannot be impleaded. If it is proved that petitioners are born during wedlock of late P.Jayakrishna with petitioners' guardian, even if the marriage of the petitioners' guardian with said late P.Jayakrishna is not valid in law, by virtue of Section 16 of the Hindu Marriage Act, 1955, they would still be entitled to succeed to his estate as legitimate children. Therefore, the contention of respondents that the mother and legal guardian of petitioners has already been made a party to the O.P. and she would adequately protect their interests, cannot be accepted.

13. As regards the contention of prejudice advanced by the learned counsel for respondents, I am of the opinion that if the petitioners are impleaded, they would file their counters in the O.P. and respondent Nos.1 and 2 can file rejoinder/s thereto. Even if the evidence on the side of respondent Nos.1 and 2/petitioners in the O.P. has commenced, their witnesses can always be recalled. This would not only avoid multiplicity of litigation but also expedite the decision on the issues raised in the suit once and for all. In my view the Court below had lost sight of the above factors and erroneously dismissed I.A.No.237 of 2013.

14. Accordingly, this Revision Petition is allowed, and the order

dt.15-03-2013 in I.A.No.237 of 2013 in F.C.O.P.No.57 of 2007 of the V Additional District Judge, Tirupati is set aside. The said I.A. is allowed. No costs.

15. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 02-06-2015

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