

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.299 of 2010

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.25.09.2008 in I.A.No.474 of 2008 in I.A.No.1706 of 2005 in O.S.No.26 of 1994 of the file of Senior Civil Judge, Kandukur.

2. The petitioner herein is 2nd defendant in the above suit.
3. The suit was filed by one Smt. G. Laxmamma for partition of the plaint schedule properties and for allotment of a share to her.
4. Arguments in the suit were heard on 14.03.2002, but subsequently thereto certain adjournments took place.
5. The suit was re-opened on 23.04.2002 and judgment was pronounced on 03.06.2002. In between these two dates, on 19.03.2002, the sole plaintiff died.
6. The petitioner filed I.A.No.474 of 2008 invoking Section 151 C.P.C. praying the Court below to dismiss all further proceedings including final decree proceedings in the suit on the ground that the decree is a nullity; that the children of deceased-plaintiff, i.e., respondent nos.4, 5 and 6 had filed application on 07.10.2002 under Order 22 Rule 3 C.P.C. to recognize them as the legal representatives of the deceased-plaintiff relying on a Will dt.12.03.2002; that they have to establish their rights under the Will independently; since they have not been impleaded prior to the preliminary decree in the suit, the suit itself abated and the

decree is a nullity; and that the Will produced by respondent nos.4, 5 and 6 is not a genuine Will, and unless a separate suit is filed to prove the Will no relief can be granted to respondent nos.4, 5 and 6.

7. The said application was dismissed by the Court. It held that even if the matter had been re-opened after the death of plaintiff, since the Court had re-opened it *suo moto* and neither parties requested it to re-open the matter, the party should not be made to suffer if for the convenience of the Court the matter was re-opened.
8. Challenging the same, the present Revision is filed.
9. Heard Sri N. Ravi Prasad, counsel for petitioner. None appears for respondent.
10. Even according to petitioner, arguments were heard in the suit and the matter was posted for judgment to 14.03.2002. Thereafter, the matter was adjourned to 22.03.2002 for filing of written arguments. Subsequently, the matter was called on 22.03.2002, 11.04.2002 and 23.04.2002 and on 23.04.2002, the matter was re-opened for judgment and on 03.06.2002, the judgment was pronounced. As stated already on 19.03.2002, the sole plaintiff had died.
11. Order 22 Rule 6 C.P.C states :

"No abatement by reason of death after hearing :-

"Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be

pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.”

12. From the above it is clear that if after the conclusion of the hearing and before the pronouncement of judgment, death of a party occurs, there will not be any abatement of the suit by reason of death of such party and judgment can be pronounced.
13. Since it is not disputed by petitioner that after the matter was argued prior to 14.03.2002, the death of sole-plaintiff occurred on 19.03.2002, the suit has not abated in view of Order 22 Rule 6 C.P.C. The Court docket proceedings filed by petitioner indicates that the Court *suo moto* opened the matter for judgment on 23.04.2002 and posted the case to 03.06.2002 on which date it pronounced the preliminary decree in the suit.
14. Obviously, the matter was re-opened for the convenience of the Court and not to hear any further arguments therein. Therefore, the arguments heard prior to 14.03.2002 have to be taken as the final arguments in the suit.
15. In this view of the matter, it cannot be said that the suit had abated and that the preliminary decree is a nullity.
16. Also, I.A.No.474 of 2008 has been filed by petitioner to dismiss the suit on 21.07.2008, more than six years after the preliminary decree had been passed on 03.06.2002. The petitioner had not chosen to challenge the decree of the trial court either in appeal, nor has he filed a review petition to review the said order. So the preliminary decree in the suit has attained finality.
17. Once the preliminary decree exists, an I.A. under Section 151 C.P.C. to dismiss further proceedings in the suit cannot be

maintained without challenging the said preliminary decree by way of appeal. So. I.A.No.474 of 2008 is not maintainable.

18. Therefore, I do not find any error or jurisdiction in the order passed by the Court below. So, the Revision is dismissed. No order as to costs.

19. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-07-2015

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