

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

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL No.41 OF 2015

DATED: 23.01.2015

Between:

Ch.Vijaya Venkata Subba Raju and another

... Appellants

And

The Andhra Pradesh Cooperative Tribunal, Hyderabad and others

... Respondents

**THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR**

WRIT APPEAL No.41 of 2015

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JUDGMENT: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is sought to be preferred and admitted against the judgment and order of the learned Single Judge dated 19.11.2014 by which His Lordship has been pleased to dismiss the Writ Petition and upheld the order of the learned Co-operative Tribunal allowing substitution of the parties on account of the death of Smt. Ch.Buchi Venkayamma.

Before we proceed further, we will record the admitted fact in this case. The third parties have preferred an appeal before the learned Co-operative Tribunal impleading Smt. Ch.Buchi Venkayamma as party respondent, in connection with the dispute of a plot of land acquired by her being a member of the co-operative society. During pendency of the said appeal, Smt. Ch.Buchi Venkayamma (for short 'the deceased') died. It is also admitted position that Sri Ch.Venkatapathi Raju, who is one of the heirs and legal representatives of the deceased, is the sixth respondent in the appeal pending before the learned Co-operative

Tribunal. The relationship between the deceased and the sixth respondent in the appeal is mother and son. In the appeal, long after 60 days from the date of death of the deceased, an application was made for, in substance, bringing on record respondent Nos.12 and 13 and the first appellant before us, as respondents 10 to 12 therein. A plea was taken before the learned Tribunal that the application for substitution of the parties ought to have been dismissed on the two grounds, firstly, after the abatement, such application has been filed, and secondly, the sixth respondent in the appeal is not in the capacity of heir and legal representative of the deceased fifth respondent, who died intestate leaving behind a Will bequeathing the property in favour of the first appellant herein. But, according to the appellants, the application was made for bringing appropriate heirs and legal representatives. When no such application was made within the sixty days, it cannot be said to be an appropriate one in the eye of law. Hence, the question of setting aside the abatement and condonation of delay and substitution of heirs and legal representatives do not arise. The same argument was advanced before the learned Trial Judge and His Lordship after noting the argument and fact, found that there was no question of abatement in this matter as such setting aside the order passed by the Co-operative Tribunal do not and could not arise. His Lordship otherwise upheld the order of substitution of the parties.

Learned counsel for the appellants argued that both

the learned Trial Judge and the Tribunal are wrong in not taking note of the fact that appropriate and lawful application for bringing heirs and legal representatives was not made despite communication of the fact that Smt. Ch.Buchi Venkayamma died bequeathing the property in favour of the first appellant herein. Except him, no other person or the legal representative of the deceased is entitled to the property in that sense.

We have heard the learned counsel for the respondents.

It is an admitted position that unregistered Will is unchallenged still now. Therefore, it is possible for any of the parties, who are affected thereby to make a challenge. Both the eventualities and possibilities are there. Under the circumstances, taking note of the Andhra Pradesh Co-operative Tribunal (Procedure) Rules, 1994 (for short 'the Rules'), we feel that the order of the learned Trial Judge and that of the Co-operative Tribunal should not be interfered with.

Rule 18 of the Rules provides for measure to be taken in case of death and Rule 19 shows the effect on the death of applicant after passing the abatement order and they read as follows:

18. Procedure in case of death of an appellant or an applicant:-

- (1) If an applicant or the respondent therein dies while the appeal or review application is pending and it cannot be proceeded with

unless his legal representatives brought on record, the Tribunal shall adjourn further proceedings to enable the legal representative of the deceased to be made a party. If such legal representative fails to do so within a period of sixty days from the date of death of the appellant or review applicant if the appellant fails to file the petition making the legal representative as per the appeal or review application, shall abate as regards such deceased appellant or review applicant as the case may be.

(2) Notwithstanding anything contained in sub-rule (1) there shall be no abatement of an appeal or review application by reason of the death of any party between the conclusion of the hearing and passing of the order but the order may, in such a case, be passed notwithstanding the death and shall have the same force and effect as if it has been passed before the death took place.

19. Effect on the death of applicant after passing the abatement

order:-

(1) Whenever an order or abatement has been passed in a case where the applicant or review applicant has died, his legal heir or representative in a case where the respondent had died, the appellant, may within sixty days from the date of such order apply to the Tribunal for setting aside the abatement and the Tribunal may on sufficient cause being shown to its satisfaction set aside the abatement and proceed with the appeal or review application.

(2) Where an application under sub-rule (1) has been filed after more than sixty days from the date of the order, the Tribunal may condone the delay on a separate application filed for the purpose when the delay is properly explained.

On a careful reading of Rule 18 of the Rules, it would

appear that event of abatement takes place only in relation to death of appellant or applicant not in case of death of respondent. In any event proceeding cannot be proceeded with unless heirs and legal representatives, in case of death of both the applicant and respondent, are brought on record. Unless there is an event of abatement, question of setting aside the abatement does not and cannot arise. The learned Trial Judge has found correctly in this case that the question of abatement does not arise. This apart, there is another reason that there must be a specific order of abatement in case of failure of making application under sub-rule (1) of Rule 18 as it is clear from sub-rule (1) of Rule 19 of the Rules and that too, it is applicable in case of death of the appellant or applicant. In other words, if the respondent dies, question of abatement does not arise at all. Only requirement is to bring the heirs and legal representatives on record before hearing of the matter is taken up on account of devolution of interest, moreover, we notice that one of the heirs and legal representatives, namely, the sixth respondent in the appeal before the learned Co-operative Tribunal is already on record in the capacity of intestacy heirs of the deceased. Admitted position is that all the heirs and legal representatives of the deceased are brought on record. For the purpose of hearing out the matter, it is for the Tribunal to hear the real necessary party. It will be open for the appellants before us particularly, the first appellant to assert his right arising out of alleged Will. It will also be open for the respondents to

contest the same, whether in the appeal or in a separate proceeding. If the Co-operative Tribunal is competent to decide the issue of validity and legality of the will under the law, it can decide. We leave all points open.

With the aforesaid discussion, the Writ Appeal is disposed of. No order as to costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

K.J. SENGUPTA, CJ

23rd JANUARY, 2015.

SANJAY KUMAR, J

Kvni/gbs

L.R. Copies to be marked.