

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.3328 OF 2014

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.15.07.2014 in IA.No.65 of 2014 in O.S.No.861 of 2009 of the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad.

2. The petitioner herein who is the pre-deceased son of late Mohd.Rasheed Ahmed Alvi, is a 3rd party to the said suit filed by the 1st respondent against the other respondents seeking partition of the properties of Smt.Akthari Begum, mother of respondents 1 to 7.

3. Petitioner filed an application IA.No.65 of 2014 under Order I Rule 10 CPC to implead him in the said suit alleging that he is one of the legal heirs of said Akthari Begum. He further contended that the properties actually belong to Mohd.Abdul Hameed Alvi, the husband of Smt.Akthari Begum. He also contended that he had been impleaded in a suit OS.No.431 of 2006 filed for partition of the properties belonging to Mohd. Abdul Hameed Alvi and therefore, he should also be impleaded in the above suit.

4. The said application was opposed by the 7th respondent. She denied that the suit property is the property

of late Mohd.Rasheed Ahmed. She alleged that plaint schedule property is joint property of legal heirs of Smt Akthari Begum, who are plaintiffs and defendants in the above suit; that late Mohd. Abdul Hameed Alvi had married Akthari Begum after the death of his first wife by name Afsari Begum; since the father of the petitioner late Rasheed Ahmed is born to Mohd. Abdul Hameed Alvi through Afsari Begum, late Mohd.Rasheed Ahmed is not the legal heir to the property of Akthari Begum; and that the plaintiff and defendants are the legal heirs as they were born to Mohd. Abdul Hameed Alvi through Akthari Begum. She further alleges that father of the petitioner is a step son of late Akthari Begum; he has no right in the property of Akthari Begum; that only sons and daughters of Akthari Begum succeed to her estate as per Shariat law; and that the petitioner will not get any share therein. She also alleged that the petitioner is trying to blackmail the legal heirs and successors of Akthari Begum by filing application for impleadment and that he has not filed any document to show that the suit schedule property is the property of late Mohd. Abdul Hameed Alvi.

5. By order dt.15.07.2014, the Court below dismissed the said application. It held that in Mohammedan law, if any of the children of a man dies before the opening of the succession to his estate, leaving children behind, these grand children are entirely excluded from inheritance by their uncles and aunts. It held that the son of pre-deceased son is

therefore not an heir. It further held that petitioner did not file any document to show that his father was alive on the date of the death of Smt.Akthari Begum, when succession was opened in respect of her estate.

6. Challenging the same this Revision is filed.

7. Counsel for the petitioner contended that the property in question, which is sought to be partitioned in O.S.No.861 of 2009, is not the property of Smt.Akthari Begum, but it is the property of her husband late Mohd. Abdul Hameed Alvi and therefore, he ought to be impleaded therein.

8. Petitioner has not disputed the allegation of the 7th respondent that he is the son born to Mohd.Abdul Hameed Alvi through Afsari Begum, his first wife, while the plaintiff and defendants in the suit are the children of Mohd.Abdul Hameed Alvi born through his 2nd wife, Smt Akthari Begum. He also not disputed that if the property in question is the property of Akthari Begum, he would not be entitled to any share therein, being the step son of the said Akthari Begum.

9. Since the suit in question is a suit for partition of the properties said to be belonging to Smt.Akthari Begum, the petitioner cannot be allowed to be impleaded therein and raise a question as to whether the property belongs to Akthari Begum or to her husband late Mohd.Abdul Hameed Alvi, as it would change the nature of the suit from a suit for partition of

the properties said to be belonging to Akthari Begum into a suit to decide the title of the property as between the Akthari Begum and her husband Mohd.Abdul Hameed Alvi.

10. Therefore, impleadment of the petitioner in the said suit would result in mis-joinder of the parties. If the petitioner is of the view that the properties in question do not belong to Smt.Akthari Begum, but belong to her husband, Mohd.Abdul Hameed Alvi, it is open to the petitioner to file a separate suit seeking appropriate relief therein in respect of the property which is subject matter of property in OS.No.861 of 2009. Merely because he has been impleaded in OS.No.431 of 2006 (filed seeking partition of the properties belonging to Mohd.Abdul Hameed Alvi), probably by mistake, he cannot insist that he be impleaded in the suit filed for partition of the properties of Akthari Begum i.e., in OS.No.861 of 2009.

11. I therefore do not find any merits in this Civil Revision Petition and is accordingly, dismissed. There shall be no order as to costs.

12. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

19th August, 2015.
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