

HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.5005 of 2013

ORDER:

Plaintiffs in O.S.No.51/1996, on the file of the Court of the Senior Civil Judge, Karimnagar are the petitioners in the present revision filed under Section 115 of the Code of Civil Procedure.

2. In the present revision challenge is to the order dated 28.10.2013 passed by the said Court in CF.No.4217 of 2011 in unregistered I.A of 2011 in O.S.No.51/1996.

3. Heard Sri C.Ramesh Sagar, learned counsel for the petitioners and Sri Lala Ramu, learned counsel for the respondents apart from perusing the material available before the Court.

4. Petitioners herein instituted suit O.S.51/1996, on the file of the Court of the Senior Civil Judge, Karimnagar, for partition and the said suit was dismissed on 07.04.2011. Aggrieved by the judgment and decree passed by the learned Senior Civil Judge, petitioners herein filed Appeal (SR) No.1884/2011 on the file of the learned District Judge, Karimnagar. The Court of the District Judge on 30.05.2011 returned the said appeal with an objection that the cause title in the grounds of appeal and the judgment and decree in O.S.51/1996 are not tallying as the second plaintiff is not shown as dead in the cause title of the judgment and decree. The learned District Judge granted two weeks time on 25.06.2011 to get the same rectified in the trial Court.

5. Subsequently, on 29.07.2011, petitioners herein filed an interlocutory application under Section 152 and 153 of the Code of Civil Procedure before the Court of the Senior Civil Judge, karimnagar for correction to show the second plaintiff as dead in the original judgment. The learned Senior Civil Judge, by way of an order dated 28.10.2013, dismissed the said application holding that the rest of the plaintiffs did

not bring the fact of death of the second plaintiff prior to the disposal of the suit and they flouted the provisions of Order 22 Rule 3 (2), Order 22 Rule 10-A, Order 22 Rule 9 (11) and Order 22 Rule 9 (2). This revision assails the said order passed by the Court of the Senior Civil Judge, Karimnagar dismissing the application filed by the petitioner herein under Section 152 and 153 of the Code of Civil Procedure.

6. It is contended by the learned counsel for the petitioners that the order passed by the learned Senior Civil Judge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 22 of the Code of Civil Procedure. It is also contended by the learned counsel that in I.A.Nos.810 and 811 of 2010 filed by the petitioners herein the second plaintiff was shown as dead in the cause title. It is also submitted that during the course of evidence, PW.1 (Plaintiff No.1) categorically deposed that the second plaintiff is no more and died about 1 ½ years ago and he died without marriage and he and the third plaintiff are the legal representatives of the second plaintiff and as such the Court below grossly erred in dismissing the application. It is also submitted that the counsel for the respondents also endorsed no-objection for allowing the application, as such, the Court below grossly erred in dismissing the application. It is also submitted that for the mistake committed by the Court in not preparing the cause-title properly the parties should not to be put to any hardship and loss.

7. On the contrary, it is contended by the learned counsel for the respondents that the Court below is perfectly justified in passing the impugned order and the order under revision is in conformity with the provisions of Order 22 of the Code of Civil Procedure. It is also argued by the learned counsel that having failed to take steps under the provisions of Order 22 of the Code of Civil Procedure, petitioners herein cannot throw the burden on the Court and there are absolutely no *bona fides* on the part of the petitioners herein to file the present application. It is also submitted by the learned counsel that the petitioners herein filed the appeal with the delay of 780 days and the same was allowed

by imposing costs vide orders dated 08.07.2013 in I.A.No.1029/2013. It is also submitted by the learned counsel that the conduct of the petitioners herein in throwing the burden on the Court cannot be tolerated. It is also submitted that during the pendency of the suit, petitioners herein did not bring to the notice of the Court about the death of the second plaintiff and the provisions of Section 152 and 153 of the Code of Civil Procedure have absolutely no relevance to the present case. It is also submitted by the learned counsel that the statement that the counsel for the respondents endorsed no-objection is absolutely incorrect and the vakalat given during the pendency of the suit is co-terminous with the disposal of the suit.

8. It is significant to note at this juncture that in the chief-affidavit of DW.1 the first respondent herein stated that after the death of her husband Gangadhar, his 1/3rd share in the suit house devolved on her, her son/second defendant and his mother Laxmi Bai and after death of Laxmi Bai her share of 4/9 in the suit house devolved on the defendants.

9. The material available before this Court manifestly discloses that O.S.No.51/1996 was dismissed by the Court of the Senior Civil Judge, Karimnagar by way of judgment and decree dated 07.04.2011. There is absolutely no dispute with regard to the reality that plaintiff No.2 passed away pending the suit before the trial Court. There is also no controversy with regard to the fact that no steps were taken under the provisions of Order 22 of the Code of Civil Procedure. In this connection, it is the contention of the learned counsel for the petitioners that in view of the cause title in I.A.Nos.810 and 811 of 2010 and the statement of PW.1 during the course of evidence, the Court of the Senior Civil Judge ought to have allowed the application. While referring to the said I.As and the evidence of PW.1, it is the case of the petitioners herein that the Court below committed a mistake in preparing the cause title properly. This conduct on the part of the petitioners herein can neither be countenanced nor approved. Yet another plea of

the petitioners herein is that the counsel of the respondents expressed no-objection. By way of filing counter the respondents herein have categorically denied the same. In the considered opinion of this Court, the concession, even assuming that it is correct, cannot be a ground to allow the application unless the party fulfills the mandatory requirements of Order 22 of the Code of Civil Procedure. A perusal of the order passed by the learned Senior Civil Judge makes it abundantly clear that the Court below considered the issue in the light of Order 22 of the Code of Civil Procedure and refused to entertain the application filed by the petitioners herein. This Court also does not find any material infirmity nor any illegality in the order passed by the Court below which enables interference under Section 151 of the Code of Civil Procedure.

10. For the aforesaid reasons, the Civil Revision Petition is dismissed. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:18.03.2015

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HON'BLE SRI JUSTICE A.V.SESHA SAI

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Between:

Nerella Chandra Kantha w/o late Nerella Gangadhar,
Age 62 years, Occu: Pensioner, H.No.2-9-96,
Corresponding to new No.2-9-111, Mokarrampura,
Karimnagar and two others.

... Petitioners

and

Nerella Nirmala w/o late Nerella Gangadhar,
Age 61 years and another.

... Respondents

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HON'BLE SRI JUSTICE A.V.SESHA SAI

PD judgment in

CIVIL REVISION PETITION No.5005 of 2013