

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION Nos.2174 & 2056 of 2014

-

-

COMMON ORDER:

These revisions are preferred against orders dated 28.03.2014 in SR No.4527 of 2000 and SR No.13701 of 2013 in O.S.No.33 of 2007, whereunder the trial Court ordered continuation of counter claim made by D-3 treating her as plaintiff.

2. Brief facts leading to this revision are as follows:

One Chenna Vijaya Lakshmi, mother of present petitioners herein filed O.S No.33 of 2007 for partition against her two sons and daughter. Both the sons are D-1 and D-2 whereas daughter is third defendant. While filing written statement daughter i.e., D-3 also made a counter claim and after the death of sole plaintiff, revision petitioners herein contended that suit has to be dismissed by discarding the counter claim. That contention was negated by the trial Court and the counter claim of D-3 was ordered to be continued treating her as plaintiff to the said suit O.S.No.33 of 2007 giving opportunity to revision petitioners herein to file additional statement, if any, in view of the transposition of D-3 as plaintiff.

3. Heard both sides.

4. The main contention of advocate for revision petitioners is that the trial Court has not properly interpreted the application of provisions of Order VIII. It is submitted that in spite of dismissing the suit due to the death of sole plaintiff, the trial Court allowed D-3 to continue the suit by transposing her as plaintiff without any such

request from

D-3, therefore the order of the trial judge is totally unwarranted.

5. On the other hand, learned counsel for respondent/3rd defendant who is transposed as plaintiff submitted that Order VIII Rule 6D of CPC clearly mandate the continuation of suit for the counter claim in spite of dismissal of the original suit, therefore the trial judge was right in passing the order.

6. Now the point that would arise for my consideration is :

“Whether the order of trial Court is legal, correct and proper?”

POINT:

7. There is no dispute with regard to relationship between the parties. There is also no dispute that second respondent herein, who is D-3 in the suit made a counter claim in the suit, who is no other than the sister of the revision petitioners herein. Now it will be necessary to refer to Order VIII Rule 6D of CPC, which reads as follows:

“6D. Effect of discontinuance of suit. If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with. “

8. It is clear from the above provision, suit has to be proceeded where a counter claim is there in spite of discontinuation of the main suit. As per 6E, the Court is bound to pronounce judgment on the counter claim made by the defendant, therefore when the sole plaintiff died and the L.Rs are no other than the revision petitioners herein and the 2nd respondent herein, the trial Court by transposing D-3 as plaintiff because of the

counter claim has not committed any error. On the other hand trial Court rightly followed the procedure and there are absolutely no incorrect findings in the order of the learned trial judge.

9. Further, as seen from the impugned order, the revision petitioners herein were given opportunity to file any additional written statement for the counter claim made by D-3 for transposing her as plaintiff in O.S.No.33 of 2007, thereby no prejudice is caused to the revision petitioners.

10. On a scrutiny of the material, I am of the view that the learned trial judge has not committed any illegality or error in transposing D-3 as plaintiff to continue the counter claim made by her.

11. For these reasons, it is held that these Civil Revision Petitions are devoid of merits and accordingly they are dismissed. No costs.

Miscellaneous petitions, if any pending, in this revision petition shall stand closed.

S. RAVI KUMAR, J

Date: 23-01-2015.

gvl