

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.3098 of 2015 and 3165 of 2015

COMMON ORDER :

Heard both sides and also perused the impugned order passed on 29.06.2015 in I.A. No.519 of 2015 in I.A. No.1442 of 2014 in O.S. No.128 of 2014 as well as in I.A No.518 of 2015 in I.A. No.1442 of 2014 in O.S. No.128 of 2014 on the file of First Additional District Judge, Kadapa.

2) The suit was filed for the relief of permanent injunction and pending suit, I.A No.1442 of 2015 was filed for temporary injunction by the three plaintiffs by name A.Thulasamma since died pending suit and A.Sampada Kumari and A.Anja@ Anjaneyulu against defendants, who are 8 in number. As 1st plaintiff died as referred supra, pending temporary injunction suit, the other plaintiffs filed an application to bring the children of 1st plaintiff and others, who are no other than sisters of three plaintiffs, on record.

3) It is one of the contentions raised in opposing the LR application by petitioners/ defendants 2 to 5 among others that there is no cause of action survives to the estate to be succeeded by the proposed LRs to bring on record. However, the lower Court allowed two applications in bringing the LRs one in the suit and another in the injunction petition referred supra. It is, impugning the same, the present revisions are filed.

4) It is not in dispute that as per the arbitration award but for to say post arbitral award conditions not properly complied is one of the contentions, the 1st plaintiff was given life time enjoyment and thereafter the property is distributed among three plaintiffs, husband of 2nd plaintiff to say the husband of the 2nd plaintiff died, his estate

represented by 2nd plaintiff. Once there is no estate that is left by deceased so far as suit schedule property is concerned though it can be said the injunction relief is not a personal relief and much less with the law in force under Order 22 Rule 3 C.P.C even after the death of original parties, implead the legal representatives.

5) Here when the 2nd plaintiff while died intestate left no estate to survive, the impleading of daughters of 1st plaintiff, who are sisters of 3rd plaintiff, does not arise. Thereby, the order is liable to be set aside. It is needless to say to avoid all technicalities etc. in effective disposal of the case by virtue of this order, lower Court shall consider whether the estate of the deceased left, if any, is substantially represented by other plaintiffs 2 and 3 that is suffice to say nothing abates.

6) Having regard to the above, lower Court shall make every endeavour to dispose of the temporary injunction petition preferably within one month from the date of receipt of the order.

7) Accordingly, the Civil Revision Petitions are disposed of. No order as to costs.

8) Miscellaneous petitions, if any pending in these Civil Revision Petitions, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

21.08.2015
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