

***THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO***

**CIVIL REVISION PETITION No.1113 OF 2015**

**ORDER:**

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 15.12.2014 in I.A.No.458 of 2014 in O.S.No.133 of 2012 of the I Additional Junior Civil Judge, Eluru.

The petitioner herein is a third party to the suit. The said suit was filed by the 1<sup>st</sup> respondent herein against respondents 2 and 3 to declare his paternity i.e., that the 3<sup>rd</sup> respondent is his father and the 2<sup>nd</sup> respondent is his mother on account of their long cohabitation as husband and wife.

Written statement was filed by the 3<sup>rd</sup> respondent opposing the suit claim and specifically contending that he had married the petitioner herein on 09.12.1974 at Calcutta and that the petitioner is his legally wedded wife. He specifically denied marrying the 2<sup>nd</sup> respondent on 04.03.1982 at Dwaraka Tirumala as alleged by the 1<sup>st</sup> respondent.

The 3<sup>rd</sup> respondent filed I.A.No.458 of 2014 under Order I Rule 10 C.P.C. to implead the petitioner herein as a defendant in the suit. He contended that the petitioner is a proper and necessary party to the suit since paternity and declaratory reliefs are being claimed by the 1<sup>st</sup> respondent in collusion with the 2<sup>nd</sup> respondent and the same would affect the rights of the petitioner, who according to him is his legally wedded wife. He contended that the petitioner is the really affected party in the suit and therefore she ought to have been impleaded as party defendant in

the suit.

The petitioner also filed a memo through an advocate to the effect that she has no objection to join as a party to the suit.

The counsel for the 1<sup>st</sup> respondent objected to the filing of implead petition and contended that it was not maintainable in view of the order dated 09.12.2013 passed by this Court in C.R.P.Nos.2961 and 2980 of 2013, wherein, according to the 1<sup>st</sup> respondent, this Court had made an observation that the petitioner need not be impleaded in the suit and if she is impleaded, it would result in mis-joinder of parties.

By order dated 15.12.2014, the Court below dismissed I.A.No.458 of 2014 relying on the said observations of this Court. It was also observed that the petitioner had not filed the petition seeking her impleadment but the petition had been filed in the Court below by the 3<sup>rd</sup> respondent.

Challenging the same, this Revision is filed.

Counsel for the petitioner contended that the view taken by the Court below is unsustainable; the observations made by this Court in C.R.P.Nos.2961 and 2980 of 2013 would not bind the petitioner inasmuch as the petitioner was not a party therein, and the view expressed in that order to the effect that the petitioner need not be impleaded, is contrary to the judgment of the Supreme Court in **D.**

**Velusamy v. D. Patchaiammal**<sup>[1]</sup> (Crl.Nos.2028-2029 of 2010, dated 21.10.201). He contended that since the legality of the relationship between the 3<sup>rd</sup> respondent and the 2<sup>nd</sup> respondent is not an issue in the suit and since the petitioner is claiming to be married earlier in point of time to the 3<sup>rd</sup> respondent, without hearing the petitioner, no declaration about the

relationship between the 3<sup>rd</sup> respondent and the 2<sup>nd</sup> respondent can be given and any such declaration would affect the rights of the petitioner.

It is pertinent to note that one Sri B. Prakasam had filed Vakalat for both respondents 1 and 2 herein and later he was replaced by Sri A. Chandraiah Naidu, advocate. Subsequently, he has also withdrawn his Vakalat and the 2<sup>nd</sup> respondent is now purporting to represent not only herself but also the 1<sup>st</sup> respondent.

The 2<sup>nd</sup> respondent has appeared in-person and contended that she being the mother of the 1<sup>st</sup> respondent, is authorized to represent the 1<sup>st</sup> respondent. She also placed reliance on a counter affidavit filed by the 1<sup>st</sup> respondent when Sri A. Chandraiah Naidu had been engaged as counsel and reiterated that the order passed by this Court on 09.12.2013 prohibits impleadment of the petitioner and that the petitioner cannot be impleaded.

I have heard the submissions of both sides.

From the facts narrated above, it is clear that the 1<sup>st</sup> respondent had filed the suit claiming to be the son of the 3<sup>rd</sup> respondent through the 2<sup>nd</sup> respondent. This fact is disputed by the 3<sup>rd</sup> respondent, who contends that the petitioner is his lawfully wedded wife and that he had married her on 09.12.1974 at Calcutta. He denied the allegation of the 1<sup>st</sup> respondent that he married the 2<sup>nd</sup> respondent on 04.03.1982 at Dwaraka Tirumala. He also denied that

the 1<sup>st</sup> respondent is his son. He contended that both respondents 1 and 2 are utter strangers to each other.

The 1<sup>st</sup> respondent had filed I.A.No.318 of 2012 under Section 45 of the Indian Evidence Act, 1872 to subject himself as well as the 3<sup>rd</sup> respondent to D.N.A. test. The said I.A. had been allowed by the Court below on 07.06.2013. The said order was questioned in C.R.P.No.2961 of 2013 before this Court.

C.R.P.No.2980 of 2013 was instituted to strike off the suit from the file of the I Additional Junior Civil Judge, Eluru, contending that the said Court does not have jurisdiction to decide the issue in view of Section 7 (1) (b) and (e) of the Family Courts Act, 1984, proviso to Sections 34 and 35 of the Specific Relief Act, 1963 read with Order II Rule 2 C.P.C and Sections 40 to 42 and 112 of the Indian Evidence Act.

Both these Revisions were decided by this Court by a common order dated 09.12.2013. This Court allowed C.R.P.No.2961 of 2013 and dismissed I.A.No.2980 of 2013 holding that the Court below had erred in exercising its jurisdiction in ordering for D.N.A. test on the 3<sup>rd</sup> respondent and should have waited till such time the 1<sup>st</sup> respondent produced necessary evidence to convince the Court that the 3<sup>rd</sup> respondent did really marry the 2<sup>nd</sup> respondent and gained access to her before ordering D.N.A. test and that it was premature for ordering it.

No doubt in the said order, the Court had rejected the contention that the petitioner was necessary to be impleaded in the suit and that the suit is fatal for non-joinder of the parties and observed that for establishing relationship of husband and wife between respondents 3 and 2, impleading the petitioner is not necessary, and if

she is so impleaded, the suit would have been hit by mis-joinder of parties.

Admittedly, in those Revisions the petitioner was not a party. Therefore, the said order does not bind the petitioner.

In **D. Velusamy** (1 supra), cited by the counsel for the petitioner, a similar issue had arisen. The appellant therein had alleged that he had married one Lakshmi on 25.06.1980 and out of wedlock a male child was born, who was studying in an Engineering College at Ooty. The respondent before the Supreme Court had filed a petition under Section 125 Cr.P.C. in 2001 before the Family Court at Coimbatore, wherein she alleged that she had married the appellant on 14.09.1986 and since then the appellant and she lived together in her father's house for two or three years. It was alleged that thereafter the appellant left the house of the respondent's father and started living in his native place, but continued to visit the respondent occasionally. She therefore contended that she is entitled to maintenance under Section

125 Cr.P.C. The appellant however contested the said proceedings contending that he had married one Lakshmi on 25.06.1980. The Family Court by judgment dated 05.03.2004 held that the appellant had married the respondent and not Lakshmi and these findings were upheld by the High Court. The appellant then questioned the judgment of the High Court in Supreme Court. The Supreme Court held that since Lakshmi was not made a party to the proceedings before the Family Court or High Court and no notice was issued to her, any declaration about her marital status vis-à-vis the appellant is wholly null and void as it would be violative of the rules of natural justice. It also held that without giving a hearing to Lakshmi, no such declaration could have been validly given by the Courts below that she

had not married the appellant since such a finding would seriously affect her rights. It also observed that if no such declaration could have been given, obviously declaration that the appellant was validly married to the respondent cannot be given, because if Lakshmi was the wife of the appellant then without divorcing her, the appellant could not have validly married the respondent.

In the present case also, the 1<sup>st</sup> respondent had sought a declaration that the 3<sup>rd</sup> respondent is his father and he was born to the 2<sup>nd</sup> respondent through the 3<sup>rd</sup> respondent due to their long cohabitation as wife and husband. He has also specifically alleged that a marriage took place between the 2<sup>nd</sup> respondent and the 3<sup>rd</sup> respondent on 04.03.1982.

Therefore, clearly the validity of the marriage between the 3<sup>rd</sup> respondent and the 2<sup>nd</sup> respondent hinges on whether the petitioner and the 3<sup>rd</sup> respondent had got married earlier in 1974 or not.

Without deciding the said issue, it is not possible for the Court below to decide the validity of the relationship between the 3<sup>rd</sup> respondent and the 2<sup>nd</sup> respondent. Therefore, in view of the decision of the Supreme Court referred to above, I hold that the said issue cannot be decided unless the petitioner is impleaded as a party, given an opportunity to contest the suit on the issue of validity of the marriage or relationship between the 3<sup>rd</sup> respondent and the 2<sup>nd</sup> respondent. Therefore, I am of the opinion that the Court below erred in dismissing I.A.No.458 of 2014 and the said order is liable to be set aside.

In the result, C.R.P.No.1113 of 2015 is allowed and I.A.No.458 of 2014 in O.S.No.133 of 2012 on the file of the

I Additional Junior Civil Judge, Eluru, shall also stand allowed. There shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending, shall stand closed.

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**M.S. RAMACHANDRA RAO, J**

07.07.2015  
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[\[1\]](#) (2010) 10 SCC 469