

HON’BLE SRI JUSTICE U.DURGA PRASAD RAO

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C.R.P.No. 2683 of 2016

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DATE: 19.08.2016

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Between:

K. Narasimha Rao (died)
and three others

.. Petitioners/
Defendants

And

Garlapati Sarojini

.. Respondent

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ORDER:-

Heard Sri Repakula Nageswara Rao, learned counsel for the petitioners and Sri Kondapally Syam Sunder, learned counsel for the respondent and with their consent this Civil Revision Petition is disposed of at the admission stage.

2. This Revision Petition is filed by the petitioners/defendant Nos.2 to 4 being aggrieved by the order dated 08.03.2016 made in I.A.No. 929 of 2015 in O.S.No. 263 of 2012 on the file of the Court of the Senior Civil Judge, Khammam whereunder the petition filed by the petitioners/defendant Nos.2 to 4 seeking permission to file additional written statement, was dismissed.

3. The respondent - plaintiff filed O.S.No. 263 of 2012 against the present petitioners - defendant Nos.2 to 4, who are the legal heirs of the deceased – 1st defendant, on the foot of a promissory note said to be executed by the

1st defendant in favor of the plaintiff. Since the 1st defendant died even prior to filing of the suit, it appears, showing him as a nominal party, the suit was filed against

his legal representatives i.e. petitioners/defendant Nos.2 to 4 for recovery of the promissory note amount. The petitioners / defendant Nos.2 to 4 are contesting the suit.

4. While so, the petitioners / defendant Nos.2 to 4 filed I.A.No. 929 of 2015 under Section 151 CPC seeking permission of the Court to file additional written statement wherein they sought to take a plea that the property sought for attachment by the plaintiff is a Government land assigned in favour of the 2nd defendant and it does not belong to the deceased /

1st defendant. The petitioners sought to take a further plea that they did not succeed any property from the deceased –

1st defendant, as such, the suit claim is not maintainable against them. I.A.No. 929 of 2015 was contested by the respondent-plaintiff by filing counter. The trial Court, ultimately dismissed the petition with an observation that the suit was of the year 2012 and coming up for cross-examination of PWs.1 and 2 and no reasons were assigned by the petitioners for non-filing of the petition prior to the commencement of the trial. Hence, the instant Civil Revision Petition.

5. The point for determination is whether there are merits in this petition to allow.

6. As can be seen, admittedly, the petitioners-defendant Nos.2 to 4 are the legal heirs of the deceased-

1st defendant who allegedly executed the promissory note. So, the main plea of the petitioners-defendant Nos.2 to 4 is that they have not succeeded to any properties from the deceased –

1st defendant and the property which was attached before judgment was also not that of the 1st defendant but it was assigned to the 2nd defendant. Since the petitioners are only the legal heirs of the deceased - 1st defendant and in order to repudiate their liability the only plea that can be taken by them is that they have not inherited any properties from the deceased - 1st defendant and since the said plea is a crucial one for defending the suit, I consider that an opportunity should be given to the petitioners to take pleas as mentioned in their additional written statement. Of course, the respondent-plaintiff will get an opportunity to counter those pleas by way of filing a rejoinder if she chooses to do so,

7. In the result, the Civil Revision Petition is allowed by setting aside the order dated 08.03.2016 made in I.A.No. 929 of 2015 in O.S.No. 263 of 2012. Consequently, the trial Court is directed to receive the additional written statement filed by the petitioners - defendant Nos.2 to 4 and give an opportunity to the respondent - plaintiff to file a rejoinder if she prefers. No order as to costs.

As a sequel to the allowing of the Civil Revision Petition, Miscellaneous Petitions, if any pending, shall

stand disposed of as infructuous.

U.DURGA PRASAD
RAO,J

19.08.2016

bcj