

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6174 of 2010

ORDER:

Heard Sri P.Rajasekhar, learned counsel appearing for the petitioner and Sri S.Arifulla, Standing Counsel for Wakf Board.

The present Civil Revision Petition is filed under Section 115 of C.P.C., aggrieved by the order dated 08.11.2010 passed in I.A.No.376 of 2008 in I.A.No.135 of 2002 in O.S.No.77 of 1995 on the file of the Senior Civil Judge, Yellamanchili, wherein and whereunder an application filed under Section 5 of Limitation Act to condone delay of 1791 days in filing petition to bring the legal representatives of deceased first respondent was allowed.

The facts in issue are as under:

I.A.No.135 of 2002 was filed under Order XX Rule 18 C.P.C. for determination of mesne profits of suit property. In the said I.A. a Commissioner was appointed, who filed a report. After passing preliminary decree, the first respondent died and hence I.A.No.376 of 2008 came to be filed to condone the delay of 1791 days in filing petition to bring the Legal Representatives of deceased/first respondent. The respondents filed their counter stating that all the family members of the first respondent are well known to the petitioner and the petition is filed only to harass the respondents and prayed to dismiss the petition. After appreciating the rival submissions, the trial Court allowed the said I.A. Challenging the same, respondent No.8 filed the present Civil Revision Petition.

Relying upon the judgment of this Court in ***Ausali Siddiramulu (died) per L.R.s v. Ausali Dubbaiah and others***^[1] learned counsel for the petitioner submits that when order 22 rules 3

or 4 is not applicable in cases of death during the final decree proceedings and one has to invoke Order 22 Rule 10 C.P.C. to bring the legal representatives on record.

In **T. Mangaraju v. K. Ganamma**, this Court held as under:

“Once preliminary decree is passed it cannot be said that the cause of action dies along with the person nor does it require that the LRs. should claim the cause of action by being brought on record within the period of limitation prescribed. In other words on account of the passing of the preliminary decree the right stands recognised by the Court. All that is required is that the final decree proceedings should be taken up at the instance of the party claiming and in that view there is no question of any abatement nor does it require that the abatement be set aside. The provision of Order 22 Rule 3 and 4 does not apply to a case where the holders dies after passing a preliminary decree.”(emphasis supplied)

In **Valluri Sambasivarao v. Motamari Veeraiah Gupta**, this Court held as under:

“22. it is clear that by passing of preliminary decree, the rights of the parties stand recognized and determined by the Court and the only thing that is left is passing of the final decree. Therefore after passing of a preliminary decree if the plaintiff dies, since no final decree can be passed on a dead person, it is essential to permit his legal representatives to come on record. Hence, after such determination and recognition of rights, if the plaintiff dies, there is no question of any abatement and the suit cannot be dismissed on the ground of abatement, after passing of a preliminary decree, except in an appeal or in a revision.” (emphasis supplied)

In **Ausali Siddiramulu case (1 supra)** a learned Single Judge of this Court held as under:

“There was no necessity for the petitioners to file petitions for condonation of delay in seeking to set aside abatement and to set aside abatement.”

In view of the judgments referred to above, this Court is of the view that the order of the trial Court in allowing the condonation of delay petition warrants no interference.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

10.02.2016
gkv

[\[1\]](#) (2014) 1 ALD 550