

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4479 of 2013

ORDER:

This civil revision petition under Article 227 of the Constitution of India is directed against the orders dated 15.07.2013 of the learned IV Additional District Judge, Ranga Reddy District passed in IA.No.946 of 2008 in OS.No.704 of 2006 filed under Order XXII Rule 4 read with Section 151 of the Code of the Civil Procedure, 1908 for permission to bring on record the legal representative of the deceased 4th defendant.

2. I have heard the submissions of the learned senior counsel for the petitioner. There is no representation for the respondents. I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The plaintiff brought a suit for specific performance. Having noticed that the 4th defendant had died even prior to the institution of the suit, the plaintiff had filed the subject interlocutory application for permission to bring on record the legal representative of the deceased 4th defendant as 6th defendant in the suit. That application was resisted *inter alia* contending that the death of the 4th defendant had occasioned even before the institution of the suit and that the suit against a dead person is not maintainable and that the plaintiff is not entitled to invoke the provision of Order XXII Rule 4 for impleading the legal representative of the 4th defendant, who had died even prior to the institution of the suit. The trial Court had dismissed the application of the plaintiff accepting the defence raised by the defendants. Therefore, the plaintiff is before this Court.

4. At the hearing, the learned senior counsel for the plaintiff brought to the notice of this court a decision of this court in **Rasetty Rajyalakshamma**

and others v. Rajamuru Kannaiah^[1] wherein exactly the question that is involved in the present revision was considered by this Court. In the cited decision, this Court considered in the first instance the question as to whether a suit instituted against a sole defendant, who had died prior to the institution of the suit itself is *non est* and held that such suit which is instituted against a dead person is not void ab initio. Dealing with the question as to whether the plaintiff in such a suit can be permitted to bring on record the legal representatives of the deceased defendant in an application filed under Order XXII Rule 4 this Court considered the scope of the said provision and also Section 21 of the Limitation Act and had held that such an application is maintainable and the plaintiff can be permitted to bring on record the legal representatives of the deceased defendant, who died prior to the institution of the suit provided such steps are taken within the period of limitation. As in that case the facts disclosed that the application is filed beyond limitation, this Court also considered the question whether such power can be exercised for granting permission to bring on record the legal representatives of the deceased defendant even after the period of limitation, and had held that if the plaintiffs request is bona fide, such a request can be considered.

5. Reverting to the facts of the case, the suit is one for specific performance. There are several defendants including the 4th defendant, who had died prior to the institution of the suit. In the well considered view of this Court, the plaintiff derives no benefit by filing a suit against a dead person, the suit being a suit for specific performance. Therefore, this Court has no hesitation in holding that the omission to implead the legal representative of the deceased 4th defendant when the suit was instituted was due to a bona fide mistake. In view of the settled legal position, this Court is of the well considered view that the order of the trial Court is unsustainable and is liable to be set aside.

6. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.946 of 2008 in OS.no.704 of 2006 is allowed. Since it is now brought to the notice of this Court that the name of

the proposed 6th defendant is not Chitti @ Chittamma but Chandana @ Chittamma, the trial Court shall accordingly permit the plaintiff to implead the legal representative of the deceased 4th defendant as per the orders of this Court with the correct name of the 6th defendant. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

01.03.2016
Vjl

[\[1\]](#) AIR 1978 AP 279