

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

C.R.P.No.27 OF 2016

Between:

B.Venkata Laxmamma

Died by LR B.Koteswara Rao

... Petitioner

VERSUS

Smt. N.Janakamma and others.

...Respondents

DATE OF JUDGMENT PRONOUNCED: 02.06.2016

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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|----------|--|------------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | -- |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes |

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*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

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+ C.R.P. No.27 of 2016

% Dated 02.06.2016

B.Venkata Laxmamma
Died by LR B.Koteswara Rao

... PETITIONER

VERSUS

\$ Smt. N.Janakamma and others.

...RESPONDENTS

! Counsel for the Petitioner: Sri C.Prakash Reddy

^ Counsel for the Respondents:Sri O.Manohar Reddy.

>HEAD NOTE:

? Cases referred

- [1] (2013) 15 Supreme Court Cases 655
- 2 2012 Law Suit (Ker) 1734
- 3 2012 (6) ALT 537
- 4 (2008) 8 Supreme Court Cases 521
- 5 (1987) 1 Supreme Court Cases 5

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P. No. 27 OF 2016

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ORDER :
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This Civil Revision Petition is filed against order in I.A.No.62 of 2013 in I.A.No.141 of 2004 in O.S.No.41 of 1981 dated 30.10.2015, wherein the petition filed by the petitioner under Order 1 Rule 10 and Section 151 of CPC for impleading him as 7th respondent/7th defendant in the place of 1st respondent/1st defendant in the proceedings as a legatee under the Will was dismissed.

2. The parties hereinafter will be referred to as arrayed in the

interlocutory application before the Court below.

Originally, the 1st respondent/plaintiff filed the suit against the petitioner, her mother and others for partition and same was dismissed by the Principal Subordinate Judge, Kurnool. Aggrieved by the same, the 1st respondent/plaintiff preferred Appeal Suit No.2072 of 1986 before this Court, which was allowed by setting aside the decree and judgment of the Court below. As per the judgment in the Appeal No.2072 of 1986, the 1st respondent/plaintiff and 1st defendant are entitled to half share each in the suit schedule property. Subsequently, upon interlocutory application i.e., I.A.No.27 of 2002 filed by the 1st respondent/plaintiff for final decree for division of suit schedule property into two equal shares, the Court below allowed the same, divided the property into two shares and allotted one share to the 1st respondent/plaintiff and other part to the 1st defendant.

Now the petitioner filed petition under Order 1 Rule 10 and Section 151 CPC to implead him as 7th respondent/7th defendant in the place of 1st respondent/1st defendant to contest the proceedings as a legatee under the Will. The petitioner is the 2nd defendant in the suit and also 2nd respondent in I.A.No.141 of 2004 filed for ascertainment of mesne profits. He was allegedly brought up under the guardianship of 1st defendant i.e, Smt.Baldlamuri Venkata Laxmamma since his childhood as she is issueless. The petitioner is the legatee under registered Will D.No.24/2010 dated 29.09.2010 executed by his mother i.e., 1st defendant towards love and affection. The 1st defendant died on 05.11.2011 due to old age and on her death, the Will dated 29.09.2010 came into operation and he became the legatee of the will and became absolute owner of his mother estate i.e., half share of the suit schedule property. The 1st respondent/plaintiff knowing fully well, have filed a memo stating that she is only legal heir and already

succeeded to the half share of his mother. The 1st respondent/plaintiff has no manner of right, title and interest against the property and sought to implead him as 7th respondent/7th defendant to contest the proceedings as a legatee.

3. The 1st respondent/plaintiff filed counter denying the averments in the affidavit filed in support of the petition stating that Bandlamuri Venkata Lakshamma cannot be the mother of the petitioner at all as she only fostered him for some years. Subsequently, petitioner went to Hyderabad and never came to visit the testator at any time. The petitioner was married 15 years back and during the marriage, a quarrel took place between the petitioner and his mother with regard to handing over of the dowry to the mother of the petitioner i.e., testator. While she was bedridden, she was looked by one Pinjari Gokamma, w/o.Moulali, who is a neighbour and remuneration was paid by the sister's son of late Venkata Lakshamma. That Bandlamuri Venkata Lakshamma was of unsound mind and the alleged Will was not executed in sound state of mind. That 1st respondent/plaintiff has already succeeded half share of late B.Venkaakshamma as her only legal heir, as such, the petitioner has no *locus standi* to come on record.

4. To substantiate the contention of the petitioner, P.Ws. 1 to 3 were examined and got marked Exs.A1 to A3. On behalf of the respondents, R.W.1 was examined but no documentary evidence was let in on their behalf.

5. After considering the rival contentions of both parties, oral and documentary evidence, the trial Court dismissed the application filed by the petitioner.

6. Heard Sri C.Prakash Reddy, learned counsel for the petitioner and Sri O.Manohar Reddy, learned Counsel for the 1st respondent.

7. Learned counsel for the petitioner submits that the Court below

erroneously dismissed the application on the ground that I.A.No.1 of 2012 filed by the petitioner for impleading him has been withdrawn. He would further contend that the said I.A. is not decided on merits, as such, bar of *res judicata* will not be applicable. In support of his contention, he relied on the judgments reported in **Erach Boman Khavar v. Tukaram Shridhar Bhat and another**^[1], **Seetha Ramachandran v. Radhakrishnan**^[2] and **Ponnuri Venkata Sai Sivananda Prabhu v. Popuri Sunitha and others**^[3].

8. On the other hand, learned counsel for the respondent submits that I.A.No.1 of 2012 was filed by the petitioner for the same relief as in the present I.A for coming on record as legatee on the basis of Will. After evidence is let in and the matter was reserved for orders, application was filed for reopening the same and after same is allowed, petitioner withdrew the said I.A. As such, petitioner is estopped from filing the present application for the self same relief. In support of his contentions, he relied on the judgments reported in **Jaladi Suguna (deceased) through LRs v. Satya Sai Central Trust and others**^[4] and **Sarguja Transport Service v. State Transport Appellate Tribunal, M.P.Gwalior**^[5].

9. In this case, it is to be seen that when the learned counsel for the petitioner was asked to produce a copy the affidavit filed in I.A.No.1 of 2012 in I.A.No.141 of 2004 in O.S.No.41 of 1981, the certified copy of the same was produced before this Court. A perusal of the affidavit in I.A.No.1 of 2012 goes to show that the averments in I.A.No.62 of 2013 are same with that of the averments in I.A.No.1 of 2012, for impleadment of legal heir of Smt. B.Venkata Lakshamma, i.e., defendant No.1 in the suit. No reasons are assigned in the affidavit filed in support of I.A.No.62 of 2013 why interlocutory application i.e., I.A.No.1 of 2012 was withdrawn earlier, after evidence is let in and after the said application was reserved for orders.

10. No doubt, as contended by the learned counsel for the petitioner

since the I.A.No.1 of 2012 is not decided on merits, the plea of principles of *res judicata* has no application, as per the judgment reported in **Erach Boman Khavar v. Tukaram Shridhar Bhat and another (supra)**, wherein the Hon'ble Supreme Court held as follows:

“39. From the aforesaid authorities it is clear as crystal that to attract the doctrine of *res judicata* it must be manifest that there has been a conscious adjudication of an issue. A plea of *res judicata* cannot be taken aid of unless there is an expression of an opinion on the merits. It is well settled in law that principle of *res judicata* is applicable between the two stages of the same litigation but the question or issue involved must have been decided at earlier stage of the same litigation.”

There is no dispute with the regard to the above proposition of law. But at the same, in the instant case, petitioner cannot maintain the present application for the same cause of action after withdrawal of I.A.No.1 of 2012 filed by him, that too, without obtaining permission to institute the present application. Though the present application is not hit by the principles of *res judicata*, but whoever waives, abandons or disclaims a right will forego the same. In order to prevent a litigant from abusing the process of the court by instituting suits again and again on the same cause of action without any good reason, the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Rule 1(3) of the Order XXIII. The principle underlying the above rule is founded on public policy as held by the Hon'ble Supreme Court in **Sarguja Transport Service v. State Transport Appellate Tribunal, M.P.Gwalior (supra)**. Though the above said decision was rendered in the context of suit proceedings, but the said principle was made applicable to writ proceedings also, since the same is founded on public policy. Though Order XXIII Rule 1 applies to suit, but I feel that the principle underlying the same is based on public policy, as such, I do not see any reason for not applying the said principle to the interlocutory applications also. In the instant case, the trial Court was right in holding that a fresh interlocutory application is not maintainable before it, in respect of the

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- [\[1\]](#) (2013) 15 Supreme Court Cases 655
- [\[2\]](#) 2012 Law Suit (Ker) 1734
- [\[3\]](#) 2012 (6) ALT 537
- [\[4\]](#) (2008) 8 Supreme Court Cases 521
- [\[5\]](#) (1987) 1 Supreme Court Cases 5