

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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C.R.P.No.2672 of 2015

AND

C.R.P.No.3148 OF 2015

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COMMON ORDER:

Heard learned counsel for the petitioners and respondents.

These two civil revision petitions are being disposed of by this common order arising out of the proceedings in O.S.No.9 of 1993.

C.R.P.No.2672 of 2015 was filed challenging the order dated 09.06.2015 in I.A.No.1209 of 2015 in I.A.No.2599 of 2012, whereas C.R.P.No.3148 of 2015 was filed challenging the order dated 26.06.2015 in I.A.No.1576 of 2012 in I.A.No.3133 of 2011 in I.A.No.2241 of 1993.

The petitioners in C.R.P.No.2672 of 2015 are defendants 5 and 6, whereas the petitioner in C.R.P.No.3148 of 2015 is the legal representative of the deceased defendant No.2.

Defendants 5 and 6 filed I.A.No.1209 of 2015 seeking a direction to summon the 17th respondent in I.A.No.2599 of 2012 on the ground that the said application was filed to set aside the preliminary decree obtained by the plaintiff on various grounds. It was further stated that they filed I.A.No.2996 of 2012 to summon the 17th respondent to produce certain documents and the said application was allowed-in-part by order dated 11.09.2012 and rejected the prayer for his cross-examination as premature. However, in pursuance of the said order, dated 11.09.2012, the 17th respondent produced the documents. The said application was filed after completion of cross examination of PW.1 by the respondents. A counter was filed to the said application stating that the 17th respondent was never examined and the question of his cross examination does not arise. It was stated that in fact, the examination of PW.1 was completed and the evidence was closed. It was also stated that in view of the dismissal of the prayer in I.A.No.2996 of 2012 for cross examination of the 17th respondent, the present application is not maintainable and he was aged about 86 years.

The suit was filed for partition and separate possession of the share of the plaintiffs. The matter was contested in appeal before this Court and before the Supreme Court and the preliminary decree was confirmed. At that stage, defendants 5 and 6 challenged the preliminary decree once again by filing I.A.No.2599 of 2012. In the said application, the present application was filed.

Admittedly, the 17th respondent is contesting the application filed by the petitioners. It is for the petitioners to prove that their case of alleged fraud, misrepresentation and suppression of facts. But the 17th respondent cannot be summoned to prove the case of the petitioners. In those circumstances only, the application of the petitioners was dismissed with the following observations by order dated 09.06.2015:

“When a party comes to the Court with a specific plea of fraud, misrepresentation and suppression of facts it is for him to substantiate the same by way of acceptable evidence both oral and documentary. He cannot rely upon the contesting party to come and prove his case in the cross examination and that is not the purport of the provisions of Order 16 Rule 14 CPC. The totality of the facts on record in the present case fails to satisfy this Court that the cross examination of 17th respondent from the petitioner side is necessary for disposal of the main petition filed by the present petitioners to set aside the preliminary decree and as already said, the documents which are sought by the petitioners by way of summoning the 17th respondent have already marked as exhibits. As such, it is not necessary to summon the 17th respondent to face cross examination in the present petition. Hence, the point is answered against the petitioners and the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.”

The affidavit filed in support of the prayer does not disclose any ground in support of the prayer and it was passed merely on the observation made by the Court in I.A.No.2996 of 2012 which allowed the production of certain documents by the 17th respondent. As stated above, the 17th respondent is not supporting the case of the petitioners and it is for them to prove their case. In the circumstances, the order dated 06.06.2015 passed by the Court below does not warrant any interference and it is liable to be dismissed.

As stated above, the petitioner in C.R.P.No.3148 of 2015 is one of the sons of the deceased defendant No.2. He filed an application, I.A.No.1576 of 2012 to review the common order dated 06.03.2012 in I.A.No.3133 of 2011 and batch. The said I.A.No.3133 of 2011 is part of the common order passed in I.A.No.1219 of 2011, dated 06.03.2012. The said applications were filed under Order 1 Rule 10 CPC for impleading the legal representatives of the deceased plaintiffs 3 and 7 and defendants 2 and 3 in O.S.No.9 of 1993. The said applications were allowed by a detailed order on 06.03.012.

The present application is filed seeking review of the said order on the ground that the observations in the said order are not tenable. It was also alleged in the grounds of review that the observation made by the lower Court in the common order dated 06.03.2012 that the legal representatives of the deceased defendant No.2 were already on record and the case against the preliminary decree was disposed of by the Supreme Court of India on 29.10.2010 was not correct. The lower Court considered the review application and observed that against the common order passed in I.A.No.1219 of 2011 and batch, the review was filed before this Court and when the same was dismissed, the matter was carried to Supreme Court and the same was confirmed. Though there was an opportunity to the petitioner to raise grounds raised in the review petition and contest in the earlier round of litigation, they have not raised those grounds and took necessary steps. Ultimately, the lower Court dismissed the application with the following observations:

“The petitioners themselves are confused. At one stage they stated that the present review petition is filed against the common order passed in I.A.No.1219 of 2011 and batch and at another stage they stated that the petition is confined only to common order passed in I.A.No.3133 of 2011 and batch. One of the ground urged in the petition is, no notice was served on the present review petitioner in I.A.Nos.218, 219, 1220 and 3132 of 2011. Those are the petitions to bring the LRs of the deceased persons. When the petitioner is not party to those IAs, how a notice is required to be issued to him is not stated. As seen from the record, the LRs of 1st defendant were brought on record as D15 to D17 as per orders in I.A.No.4320 of 1987, dated 21.01.1988, the LRs of 3^d defendant were brought on record as D18 to D20 as per orders in CMP No.22423 of 1999, dated 01.11.1999 and the LRs of 2nd defendant were brought on record as D21 to D26 as per ASMP No.14437 of 2004, dated 17.02.2005. Similarly, the LRs of 6th defendant were brought on record as orders in I.A.No.763 of 1998, dated 31.03.1998, the LRs of 7th plaintiff were brought on record as per orders in I.A.No.1220 of 2011, dated 28.02.2012, the LRs of 3^d plaintiff were brought on record as per orders in I.A.No.1219 of 2011, dated 28.02.2012 and the LRs of 1st plaintiff were brought on record as per orders in I.A.No.1218 of 2011, dated 07.06.2011. When the third party failed to bring the LRs of deceased persons, the known procedure is to cause notice to the LRs. When the LRs themselves filed a petition to come on record notice is to be given to the counsel on the record by the

parties who are already on record. Even assuming for a movement, notice on the counsel to the defendant was not caused, the counsel on record is expected to follow the proceedings of the Court. Failure to participate in the LRs proceedings on the ground that no notice was served on them cannot be a reason now at this stage to say that the orders passed in the petitions to be brought on record are bad in law.

Another important aspect, as already said, is against the common orders, a revision was filed before the Hon'ble High Court in CRP and the same was dismissed and against that SLP was filed and the same was also dismissed. There was an opportunity to the present petitioners to agitate this ground in the CRP before the Hon'ble High Court or the Apex Court, but they have not done it. In the written statements the learned counsel for the petitioners sought to contend that some of the observations made by the Hon'ble Court and the Hon'ble Supreme Court in the orders are extracted and asked this Court to consider them, but the same is not permissible. The learned counsel says that some of the observations by the Hon'ble High Court in the revision petition and the Supreme Court in the SLP are not correct, but this Court is unable to take same aspect for consideration. Another submission by the counsel for the petitioner is that this Court having recorded the contentions in the order at para 4, no discussion was made nor a finding was given on this aspect. Hence, the contention raised by the present review petitioner has remained unanswered by this Court and it is to be considered. This argument has also no force. To maintain a review, the error must be apparent on the face of it, which is not there in the present case for consideration and a separate finding cannot be given in the interlocutory application. The counsel further submitted that the submissions of the respondent's counsel that in view of dismissal of the revision petition by the Hon'ble High Court and the SLP by the Hon'ble Supreme Court, the present review petition has become infructuous is not correct, because review application has to be decided on its own merits and under the provisions of Order 47, review is interest of justice and the doctrine of merger and estoppels have no application. In support of this agreement the learned counsel extracted some of the case laws in the written arguments, but the cases referred by him are in respect of Article 136 and other provisions, which are not akin to the facts of the present case. So either on law or on facts the petition has no merits and it deserves to be dismissed.

In the result, the petition is dismissed."

Learned counsel for the petitioners submits that though there is no grievance with regard to the impleadment of the legal representatives certain events took place subsequent to the death of his father behind his back. But those events are not subject matter of the present civil revision petitions. Hence, this Court cannot go into the said aspect of the matter.

Now admittedly, the final decree proceedings are pending, if the

petitioner wants to go on contest the said proceedings on his own. On the grounds available to the deceased defendant No.2 along with other legal representatives, it is open to him to take necessary steps, but he cannot challenge the order passed on the earlier occasion impleading the same legal representatives, which has become final. No tenable grounds are raised for reviewing the said order.

In view of the same, the dismissal of the review application by order dated 26.06.2015 does not warrant interference by this Court. Hence, the civil revision petition is liable to be dismissed.

At this stage, learned counsel for the petitioners in both the revisions sought liberty to file appropriate applications before the lower Court and it is needless to observe that it is open to them to file appropriate applications, if they so choose in accordance with law and the same shall be disposed of after giving opportunity to both parties and no liberty is necessarily to be given by this Court while disposing of these revisions.

With the above observations, both the civil revision petitions fail and they are accordingly dismissed, but without costs.

Miscellaneous Petitions, if any, pending in this revision petition shall stand closed.

A.RAMALINGESWARA RAO,J

DATED: 11.02.2016

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.2672 of 2015

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