

**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**  
**CIVIL REVISION PETITION Nos. 3433, 3487 and 3555 of 2011**

**COMMON ORDER:**

The suit in O.S.No.61 of 1979 was filed on the file of the Senior Civil Judge at Adoni for partition of joint family properties. During the pendency of the suit, the 1<sup>st</sup> defendant died on 27.02.2010, who is none other than the father of the plaintiff. Thereafter, the 2<sup>nd</sup> defendant filed I.A.No.84 of 2011 under Order XXII Rule 9 of CPC with a prayer to abate the suit, on the ground that the plaintiff failed to bring on record all the legal representatives of the deceased 1<sup>st</sup> defendant, and the defendants 4 and 5 filed I.A.No.85 of 2011 under Section 151 of CPC seeking to reopen the matter for further evidence on their behalf. The trial Court allowed the I.A.No.84 of 2011 and dismissed the I.A.No.85 of 2011, by separate orders, dated 01.04.2011. While challenging the allowing of the I.A.No.84 of 2011, the plaintiff filed C.R.P.No.3433 of 2011 and the defendants 4 and 5 filed C.R.P.No.3487 of 2011, questioning the dismissal of the I.A.No.85 of 2011, the defendants 4 and 5 filed C.R.P.No.3555 of 2011.

Since the issue raised in all these civil revision petitions is one and the same, they are heard together and being disposed of by this common order.

The parties to the suit are the family members of one K. Srinivasa Char. He had two wives and the first wife died in the year 1946. From out of the first marriage, he had four children i.e., two sons and two daughters. Said K. Srinivasa Char had four children from out of the second marriage. The first child born out of second marriage filed the partition suit in the year 1979. The children born out of second marriage are cut off from the children of first wife and the father, K. Srinivasa Char, died on 27.02.2010.

The 2<sup>nd</sup> defendant filed I.A.No.84 of 2011 under Order XXII Rule 9 of CPC, consequent upon the death of the 1<sup>st</sup> defendant. The said provision of law is to set aside the abatement proceedings, but not to abate the suit. However, the trial Court allowed the said petition holding that the suit stood abated for not bringing the legal representatives of the deceased 1<sup>st</sup> defendant on record. Further, if the 2<sup>nd</sup> defendant had informed about the details of the legal representatives of his two sisters, perhaps the plaintiff would have taken steps to bring on record the legal representatives of the two sisters of the 2<sup>nd</sup> defendant. No partition suit would be abated, because every member of a joint family is entitled for some share or the other in the joint family properties. Therefore, the orders of the trial Court are liable to be dismissed.

Accordingly, all these three Civil Revision Petitions are allowed and the impugned orders are set aside. The trial Court is directed to reopen the suit and adjudicate the same on merits. Since

the suit is of the year 1979, the trial Court is directed to dispose of the suit as early as possible, preferably within a period of six (6) months from the date of receipt of a copy of this order.

Consequently, miscellaneous petitions if any pending in the revisions shall stand dismissed. There shall be no order as to costs.

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**ABHINAND KUMAR SHAVILI, J**

27<sup>th</sup> October, 2017  
cbs



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(allowed)

27<sup>th</sup> October, 2017

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