

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2434 of 2017

ORDER:

The petitioners-JDr's 2 to 4, who are the legal representatives of the deceased sole judgment debtor filed this civil revision petition, under Article 227 of the Constitution of India, assailing the orders, dated 09.12.2016, of the learned X Junior Civil Judge, City Civil Court, Hyderabad, whereby the learned Judge while allowing EA.no.177 of 2016 in EP.no.36 of 2005 accorded permission to the DHrs 2 to 5, who are the legal heirs of the deceased 1st DHr, to bring on record of the Execution Petition, the judgment debtors 2 to 5, they being the legal representatives of the deceased 1st JDr.

2. I have heard the submissions of *Sri Mohd. Ghulam Hussain*, learned counsel for the petitioners-JDr's, and of *Sri P. Narsing Rao*, learned counsel for the respondents 2 to 5. I have perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The DHrs filed the Execution petition for execution of the decree for mandatory injunction directing removal of wooden box (dabba) on the public road which is on the Eastern side of the petrol bunk of the DHrs. During the pendency of the EP, the sole JDr (since died) preferred A.S.No.142 of 2005 before the Court of the learned III Additional Chief Judge, City Civil Court, Hyderabad, assailing the decree and judgment, dated 17.01.2005, of the trial Court passed in OS.No.3670 of 2000. That appeal, on transfer, was dismissed by the learned XIII Additional Chief Judge, (Judge, Fast Track Court), City Civil Court, Hyderabad, by judgment, dated 15.12.2006. However, during the pendency of the said first appeal, the sole JDr-appellant died. His LRs, that is, the JDr's 2 to 4

herein were brought on record in the said first appeal suit. After the said appeal was dismissed, on 15.12.2006, the JDrs 2 to 4 preferred a Second Appeal. The Second Appeal was dismissed by this Court by judgment, dated 24.07.2014. After the dismissal of the Second Appeal, the JDrs 2 to 4 failed to remove the wooden box (dabba). The Execution Petition is filed against the sole JDr even prior to the institution of the first appeal as the sole JDr is alive by then. However, the said sole JDr died during the pendency of his first appeal and his LRs/ JDrs 2 to 4 were brought on record in the first appeal suit on the original side and their first appeal and second appeal were dismissed. Hence, the present application is filed for bringing on record the JDrs 2 to 4, who are the legal heirs of the deceased sole JDr, and, who are already impleaded during the pendency of the first appeal and who are also the appellants in the second appeal.

The JDrs filed a counter, *inter alia*, stating as follows: 'After the EP is filed, the first appeal was filed and dismissed. Later a second appeal was filed and dismissed. During the pendency of the first appeal, the sole JDr died and the JDrs 2 to 4 were impleaded as appellants 2 to 4 in the first appeal. During the pendency of the first appeal, the DHr also died and DHrs 2 to 5 are already on record. Therefore, as in the EP the JDrs 2 to 4 were not impleaded, the EP has become infructuous. The judgment of the trial Court merged with the judgments and decrees of the first appellate Court and the second appellate Court. The EP itself is not maintainable and the JDrs 2 to 4 cannot be impleaded in the EP. The dabba was obtained on rent by the deceased sole JDr.'

The Court of execution allowed the petition and permitted the DHrs 2 to 5 to bring the JDrs 2 to 4 on record of the EP.

4. Admittedly, JDrs 2 to 4 are parties to the first appeal as well as the second appeal, so also the DHrs 2 to 5. Since the LRs of the deceased JDr were already brought on record in the proceedings on the original side, it is axiomatic that they can be brought on record in the Execution Petition, which was filed during the life time of the sole JDr. As per the settled legal position which is stated in V. Uthirapathi v. Ashrab Ali and others¹ an EP does not abate either on the death of the DHr or JDr and the LRs can be brought on record within a reasonable time. When in-fact the JDrs 2 to 4 are already parties to the proceedings namely first appeal suit and the second appeal, their objection that they cannot be impleaded as parties to the Execution Petition and that the Execution Petition has become infructuous is misconceived and untenable. Even on the application of law of merger, in the pending Execution Petition, the legal heirs who are already parties to the first appeal suit and second appeal can be brought on record as the question of abatement does not arise and as the decree is executable against the legal heirs of the JDr, whose first appeal and second appeal are dismissed by the Additional Court and this Court subsequent to the filing of the Execution Petition.

5. On the above analysis, this Court finds that there is no illegality or irregularity in the order of the executing Court warranting interference and that the order of the executing Court is justified under facts and in law.

6. In the result, the Civil Revision Petition is dismissed with costs.

¹ AIR 1998 SC 1168

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

M. SEETHARAMA MURTI, J

18.09.2017
Vjl

