

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3279 of 2017

ORDER:

This Civil Revision Petition is filed by the petitioner under Article 227 of Constitution of India, challenging the order, dated 28-12-2016 passed in I.A.No.487 of 2016 in O.S.No.522 of 2005 by the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad, dismissing the I.A. filed under Order XXII Rule 4 (4) of Code of Civil Procedure, denying the exemption from substituting the legal heirs of 2nd defendant i.e., B.N. Prasuna Devi.

Heard Smt.E. Padmavathi, petitioner/plaintiff/party-in-person.

The petitioners/plaintiffs filed I.A.No.487 of 2016 under Order XXII Rule 4 (4) of Code of Civil Procedure alleging that Smt.B.N. Prasuna Devi is the legally wedded 2nd wife of deceased 1st defendant and petitioner No.2 is the daughter born during wedlock. While the matter stood thus, the 2nd defendant died and her counsel Sri Chandrashekar did not furnish the details of legal heirs including the date of death, as required under Order XXII Rule 10 (a) of Code of Civil Procedure, thereby she could not bring the legal heirs on record.

The petitioner filed memo, dated 27-09-2016 requesting the Court to direct the 2nd respondent counsel to intimate the date of death and details of legal heirs but no purpose was served, thereby she could not bring the legal heirs of the deceased 2nd respondent on record and sought for exemption to bring legal heirs of deceased 2nd defendant.

The trial Court upon hearing the arguments of both the counsel dismissed the petition on the ground that the 2nd respondent filed her written statement and contested the matter by engaging advocate, therefore, exemption under Order XXII Rule 4 (4) of Code of Civil Procedure cannot be granted.

Aggrieved by the order, the petitioner-Smt. E. Padmavathi, as party-in-person filed the present revision on the ground that the trial Court did not consider the failure of counsel for 2nd defendant to intimate the details of death, legal heirs of 2nd respondent and date of death, despite request made by this petitioner and she was only contesting the matter for the sake of contest and never appeared before the Court in person to prosecute the proceedings but the trial Court did not consider these aspects and committed serious error in dismissing the petition.

During hearing the petitioner- Smt. E. Padmavathi contended that 2nd defendant did not appear in person to

prosecute the proceedings and the trial Court can exempt impleadment of legal heirs of deceased-2nd defendant but erroneously dismissed the petition.

Admittedly, the 2nd defendant filed written statement engaging advocate Sri Chandrashekar and prosecuting the proceedings. Thus, the requirement under Sub-Rule 4 of Rule 4 of Order XXII of Code of Civil Procedure is satisfied. The 2nd defendant though filed her written statement has failed to appear and contest the suit at the hearing and if the court may think it fit exempt the plaintiff from substituting the legal heirs of deceased defendant.

Here in this case is that the 2nd defendant filed written statement and contesting the suit by engaging counsel Sri Chandrashekar and mere failure to appear before the Court on the date of adjournment is not a ground to exempt substituting the legal heirs of deceased 2nd defendant by exercising the power under Order XXII Rule 4 (4) of Code of Civil Procedure. Therefore, the contention of the petitioner that on account of failure to appear in person before the Court, she can be exempted from impleading the legal heirs of 2nd defendant is without any substance. Therefore, there is no error in the order passed by the trial Court warranting interference of this Court and consequently, the petition is liable to be dismissed as it is devoid of merits.

Accordingly, the Civil Revision Petition is dismissed at the stage of admission. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

July 12, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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