

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.1270 OF 2017

ORDER:

The present Civil Revision Petition, under Article 227 of the Constitution of India, came to be filed by the petitioner/plaintiff challenging the order dated 14.09.2016 passed in Interlocutory Application No.3 of 2015 in Original Suit No.332 of 2012 by the Additional Senior Civil Judge, Tirupati, wherein the petition filed under Order 22 Rule 4 CPC to implead the legal heirs of the deceased defendant in the main suit was dismissed with costs.

2. Heard the learned counsel for the petitioner. In spite of service of notice, no representation on behalf of the respondents.

3. A perusal of the record would disclose that the petitioner/plaintiff filed the above suit for partition of suit schedule property. Pending the suit, as the sole defendant died, the petitioner/plaintiff filed three applications viz., I.A.Nos.1, 2 and 3 of 2015. I.A.No.1 of 2015 was filed under Section 5 of the Limitation Act, to condone the delay of 132 days in filing the application to set aside the abatement order against the deceased defendant; I.A.No.2 of 2015 is filed under Order 22 Rule 9 CPC to set aside the abatement Order against the deceased defendant; and I.A.No.3 of 2015 is filed under Order 22 Rule 4 CPC to implead the legal heirs of the deceased defendant.

4. It is to be observed that I.A.Nos.1 and 2 of 2015 filed by the petitioner were allowed condoning the delay of 132 days in filing the application to set aside the abatement order and also the application seeking to set aside the abatement order against the deceased defendant on certain terms and conditions. Having done so, the trial Court erred in rejecting the application to bring on record the legal heirs of the deceased. When the reason given for delay in the application filed under Section 5 of the Limitation Act to condone the delay to set aside the abatement order against the deceased was accepted, there was no justification for the Court below to reject the application filed under Order 22 Rule 4 CPC on the ground that delay was properly explained. In the interest of justice, the Court below should have accepted the request of the petitioner in I.A.No.3 of 2015, in view of the orders in I.A.Nos.1 and 2 of 2015.

5. Having regard to the above, the Civil Revision Petition is allowed setting aside the order dated 14.09.2016 passed in Interlocutory Application No.3 of 2015 in Original Suit No.332 of 2012 by the Additional Senior Civil Judge, Tirupati. The petitioner is permitted to implead the legal heirs of the deceased defendant, as defendants 2 and 3 in the main suit.

Consequently, Miscellaneous Petitions, if any, pending in this revision shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

Date:08.08.2017
INL