

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**C.R.P.No.4837 of 2012**

**ORDER:**

This civil revision petition is filed under Article 227 of the Constitution of India by the petitioner challenging the order dated 26.06.2012 in I.A.No.81 of 2011 in S.O.P.No.31 of 2011 passed by the Senior Civil Judge, Kavali whereby the trial Court allowed the petition filed under Order 1 Rule 10 of the Code of Civil Procedure (for short 'C.P.C.') to implead the petitioner therein/respondent herein as proper and necessary party to the Succession O.P. filed under Section 370 of the Indian Succession Act for issue of succession certificate in respect of properties mentioned in the schedule of property.

The petitioner alleged that she is only legal heir to the deceased T.Koteswar Rao. The deceased T.Koteswara Rao had one sister by name Rangamma and that said Rangamma had two daughters by name Lakshmidevi and Venkataramanamma. The petitioner is also entitled to claim interest in the properties of late T.Koteswar Rao.

Respondent filed counter denying the material allegations contending that the petitioner before this Court is not legal heir of deceased, T.Koteswara Rao and the petitioner is sister's daughter and thereby there is no lineage between late T.Koteswara Rao being sister's daughter. Late Koteswara Rao executed a Will in favour of the respondent to enjoy the estate after his demise since his wife pre-deceased leaving behind adopted daughter, who is only legal heir to bequeath the property the deceased left behind him.

Therefore, the petitioner is neither proper nor necessary party to the petition and prayed for dismissal.

The trial Court upon considering the facts and circumstances of the case concluded that the respondent is necessary party, though the petition was filed to obtain succession certificate for recovery of amount.

The present revision petition is filed mainly on the ground that the respondent herein is not a proper or necessary party since she did not possess any interest in the property and prayed to set aside the same.

Learned counsel for the petitioner would contend that when the respondent had no interest in the property being the sister's daughter of deceased Koteswara Rao, she cannot come on record and even in her absence, the petition can be adjudicated effectively. Therefore, the presence of the respondent is not required.

Upon hearing learned counsel for the petitioner and perusing the material on record, the point for consideration is:

“Whether the third party can come on record by filing Order 1 Rule 10 C.P.C. in a petition filed under Section 370 of the Indian Succession Act?”

Undisputedly, the petitioner before this Court filed petition for issuance of succession certificate for recovery of arrears of amount lying in Andhra Pragathi Grameena Bank at Udayagiri, claiming to be the sole legal heir of the deceased Koteswara Rao. But the contention of the proposed party, the respondent before this Court is that she is also entitled to claim amount and she is a proper and necessary party to the suit and filed implead petition. This

question is no more *res integra* in view of decision of this Court in **Vishnu kumar v Bhavari Bai and others** (Manu/AP/0198/1979).

This Court while deciding a similar question held that the petitioner can come on record, as filing of objections are invited by general notice by publication is permitted and the Court is bound to consider such objections, but instead of filing such objections, the respondent herein wanted to come on record and therefore, she can be impleaded as party and file objections. It is always open to the succession Court to direct the third party to setting up superior title in such case, complicated questions to have his rights decided in a civil Court. But that is far from saying that he cannot be impleaded as a party or that he should not be heard at this stage. If the third party seeks to agitate questions beyond the compass of the original petition, it would be reasonable for the Succession Court so direct him to approach a Civil Court for vindication of his rights. But that is no ground for saying that he cannot be impleaded as a party. At any rate, when he can be permitted to intervene as an objector, he can as well be impleaded as a party. Thus, in the very view of the matter taken by the lower Court, allowing the revision petitioner to file his objection, the Court held that he can as well be impleaded as a party, having recourse to the provisions of Order 1 Rule 10 C.P.C. since it is held that the provisions of Order 1 Rule 10 C.P.C are applicable under the Succession Act in the light of Section 141 C.P.C. no difficulty would arise even in transposing the revision petitioner as respondent.

In view of the law declared by this Court, the order under challenge cannot be reversed or set aside while exercising power

under Article 227 of the Constitution of India holding that the petitioner can intervene as an objector or file an application under Order 1 Rule 10 C.P.C in a petition filed under Section 370 of Indian Succession Act subject to limitations mentioned in the judgment.

Accordingly, the Civil Revision Petition is dismissed. However, the trial Court is directed to decide the entitlement of Succession Certificate. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in the petition, shall stand closed.

Date: 13.06.2017  
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**M. SATYANARAYANA MURTHY J**

