

**The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

**Civil Revision Petition No.1049 of 2017**

**Date: 03.03.2017**

**Between:**

Kaduri Appala Raju

**... Petitioner**

**and**

Kaduri Dhanalakshmi and 3 others

**...Respondents**

**Counsel for the Petitioner: Mr.K.Purushotham**

**The Court made the following:**



**Order:**

This Civil Revision Petition arises out of Order, dated 28-11-2016, in IA.No.430 of 2016 in OS.No.361 of 2014 on the file of the Principal Senior Civil Judge, Gajuwaka.

The petitioner has filed the aforementioned suit claiming a share in the terminal benefits payable to his late father Kaduri Danayya. According to the petitioner, respondent No.1 is the second wife of his father and respondent Nos.2 and 3 are her children. Pending the suit, the petitioner has filed the aforementioned IA under Order XXXVIII Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) for a direction to respondent No.1 to deposit a sum of Rs.5 lakhs towards his 1/5<sup>th</sup> share, failing which the amounts lying with respondent No.4 may be attached before judgment. This Application was dismissed mainly on the ground that IA.No.42 of 2016 filed by the petitioner for identical reliefs was dismissed on 29-03-2016 with certain observations and that the said order has become final.

At the hearing, Mr.K.Purushotham, learned Counsel for the petitioner, has not disputed the fact that IA.No.42 of 2016, filed by his client earlier, was dismissed. He has further sought to draw a distinction between the two IAs on the short ground that IA.No.42 of 2016 was filed under Section 151 CPC, and the present IA is filed under Order XXXVIII Rule 5 CPC.

I find this distinction wholly artificial, for, the provision of law under which the applications were filed has no relevance so long as the purpose and purport thereof remain the same. Having failed in his attempt to secure the relief in IA.No.42 of 2016, the petitioner is not entitled to file successive applications for the same relief by changing the provisions of law. As observed above, while dismissing IA.No.42 of 2016, the Court below has made an observation that if the petitioner is able to prove his case at the end of the trial, he would be automatically entitled to claim the amount from respondent No.1 towards his share. The petitioner allowed the said order to attain finality. Therefore, he is not entitled to file a fresh application by changing the provision of law.

In the aforementioned facts of the case, I do not find any jurisdictional error in the order of the lower Court dismissing the IA.

The Civil Revision Petition is, accordingly, dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.1388 of 2017, filed by the petitioner for interim relief, is disposed of as infructuous.

Dt: 3<sup>rd</sup> March, 2017  
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(C.V.Nagarjuna Reddy, J)

