

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.3693 OF 2017

ORDER:

The petitioners herein are third parties and proposed defendants 4 and 5 in O.S.No.115 of 2011 on the file of the Principal District Judge, Nellore. The respondents 1 to 4 filed the said suit seeking declaration of title in respect of the plaint schedule property. The suit was filed against one Jamma and two others. It is the case of the plaintiffs that the first defendant joined as a cook in the house of the deceased Malakondaiah, who belongs to Goud caste and hailed from Muthukoor, developed illicit intimacy with the said Malakondaiah before his death and picked up quarrels with the first plaintiff and threw them out of the property. During the life time of Malakondaiah, the second defendant joined as a tenant in one portion and the first defendant developed illicit intimacy with the second defendant also. Malakondaiah died on 31.03.2011 and the defendants 2 and 3 joined the first defendant to deny the rights of the plaintiff.

The first defendant filed written statement and later on she died executing a Will in favour of the proposed defendants 4 and 5, who are the petitioners herein. The case of the first defendant in the written statement was the first defendant and her husband Malakondaiah had no issues and he was the absolute owner of 47 akanams of land in Survey No.1047/1 of Kavali Bit-II having assigned the same by the Government in the year 1983. He constructed RCC house and shop rooms in the said site. He executed a Will on 31.12.1991 in favour of the first defendant in respect of the said property. After the death of the first defendant, the petitioners herein filed I.A.No.724 of 2015 seeking impleadment as defendants 4 and 5 in the said suit stating that they succeeded to the rights of the deceased Jamma by virtue of the Will, dated 18.05.2011. The application for impleadment was opposed by the plaintiffs by filing a counter affidavit. The trial Court by its

Judgment dated 11.07.2017 dismissed the application of the petitioners herein and challenging the same, the present civil revision petition is filed.

Admittedly, the property belongs to Jammu Malakondaiah and it appears that it is an assigned land. The case of the first defendant was that he executed a Will in her favour in respect of the said property on 31.12.1991 and after filing the written statement in the suit, she died. Now the present petitioners filed the application seeking impleadment on the ground that the first defendant executed a Will on 18.05.2011 in their favour. In such circumstances, in order to decide the nature of the property, the right, title and interest in the property of the first defendant, the presence of the petitioners is necessary. At this stage, it is not necessary to decide whether the Will confers any right on the petitioners or whether the assigned land can be transferred in favour of the petitioners or not. The presence of the petitioners cannot be denied by virtue of the Will executed on 18.05.2011 by the first defendant. It is settled law that if the cause of action survives, the suit can be continued by the persons who claim title from the deceased.

In view of the same, the order passed by the learned Principal District Judge, Nellore, dated 11.07.2017 in I.A.No.724 of 2015 in O.S.No.115 of 2011, is set aside and I.A.No.724 of 2015 is allowed. The trial Court shall dispose of the suit uninfluenced by the observations made in the present order either with regard to the Wills involved in the suit or with regard to the nature of the property.

The civil revision petition is accordingly allowed. Consequently, miscellaneous petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

22.12.2017
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