

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

CIVIL REVISION PETITION No. 4545 of 2016

Between:

R. Vengal Reddy (died)
R. Paghupathi Reddy and others PETITIONERS

VERSUS

R. Subramanyam Reddy (died)
R. Krishna Reddy (died)
R. Annapurnamma and others RESPONDENTS

JUDGMENT PRONOUNCED ON : 27.01.2017

HON' BLE SRI JUSTICE :C. PRAVEEN KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the Judgment ? : Yes/ No
2. Whether the copies of judgment may be marked to Law Reporters/ Journals : Yes/ No
3. Whether Their Ladyship/ Lordship wish to see the fair copy of judgment : Yes/ No

JUSTICE C. PRAVEEN KUMAR

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4545 of 2016

ORDER :

%Dated 27.01.2017

R.Vengal Reddy (died)
R.Raghupathi Reddy and others PETITIONERS

VERSUS

\$ R.Subramanyam Reddy (died)
R.Krishna Reddy (died)
R.Annapurnamma and others RESPONDENTS

! Counsel for Petitioners : Sri T.C.Krishnan

^ Counsel for Respondents: Sri S.V.Muni Reddy

< GIST :

> HEAD NOTE :

?Cases referred :

1. (1993) 2 ALT 95
2. AIR 1924 P.C. 198
3. (1997) 5 ALT 183 (S.B.)
4. ILR 1971 Delhi 547
5. (1996) AIR SC 116
6. (2001) 5 ALT 645 (D.B.)



HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4545 of 2016

ORDER:

1) Assailing the order, dated 30.03.2016, passed in I.A.No.524 of 2014 in I.A.No.263 of 2013 in O.S.No.747 of 1988, on the file of the II Additional Junior Civil Judge, Chittoor, wherein an application filed under Order I Rule 10 of C.P.C., seeking permission to come on record as petitioners 3 to 10, being the legal representatives of deceased plaintiffs 1 and 2, was allowed, the present Civil Revision Petition is filed.

2) The facts in issue are as under:

R.Subramanyam Reddy and R.Krishna Reddy, filed O.S.No.747 of 1988 against the petitioners herein seeking partition of the plaint schedule property. The said suit was decreed and a preliminary decree came to be passed on 23.03.1995. Aggrieved by the said judgment and decree, the petitioners herein preferred A.S.No.51 of 1995 on the file of the VII Additional District Judge, Chittoor, which was dismissed for default, on 29.01.2002. While things stood thus, the plaintiff No.1 died on 06.05.1999 and plaintiff No.2 died on 10.03.2004, leaving behind respondents 3 to 10 herein as their legal heirs. As they are the only legal representatives to the deceased plaintiffs, they filed I.A.No.263 of 2013 for passing of final decree. The said petition was dismissed on 23.08.2014, on the ground that the said I.A., was not

maintainable since the proposed petitioners have not yet come on record. Having regard to the above, an I.A. came to be filed by the respondents herein to come on record in the final decree proceedings, being the legal representatives of deceased plaintiffs 1 and 2.

3) A counter came to be filed opposing the same. It is urged that filing of a petition under Order I Rule 10 of C.P.C., is impermissible under law. It is stated that if the plaintiffs have died after passing of preliminary decree, it is the duty of the proposed parties, who are the legal heirs of the deceased plaintiffs, to come on record within the prescribed time and if no such application is filed, the suit would automatically get abated. It is further stated that though the suit was decreed on 23.03.1995, the present application came to be filed after lapse of twelve years, which is barred by limitation under the provisions of the Limitation Act.

4) After considering the rival submissions made by both the parties, the trial Court allowed the said application holding that an application under Order I Rule 10 of C.P.C., is maintainable to bring the legal representatives of the deceased on record after the death of the concerned parties for passing of a final decree. It is further held that after passing of preliminary decree, there could be no abatement on the death of the parties. Since the rights of the parties are already determined before the death of the deceased, the death of the parties does not have any effect on the proceedings.

5) The issue that arises for consideration is; whether filing of an application by the proposed parties to come on record after passing of a preliminary decree is permissible under law, if so, under which provision.

6) Before proceeding further, it would be appropriate to refer to Order I Rule 10 and Order XXII Rules 5 and 6 of C.P.C., which reads as under:

Order I Rule 10 of C.P.C. Suit in name of wrong plaintiff:

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties: The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendants, or whose presence before the Court may be necessary in order to enable the Court effectually and

completely to adjudicate upon and settle all the questions involved in the suit, be added.

- (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.
- (4) Where defendant added, plaint to be amended:
Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.
- (5) Subject to the provisions of the Indian Limitation Act, 1877, Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

Order XXII Rules 5 and 6 of C.P.C.

Rule 5: Determination of question as to legal representative: Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

Provided that where such question arises before an Appellate Court, that Court may, before determining the questions, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.

Rule 6: No abatement by reason of death after hearing:

Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.”

7) In *Kedarisetti Suryanarayana v. Kedarisetti Venkat araju*¹, this Court was dealing with a situation where the petitioner/ defendant filed an I.A., to bring on record certain third parties as legal representatives of seventh defendant therein. It was also a case for partition and separate possession, which was decreed on 27.02.1970 and a final decree petition was pending. The seventh defendant died on 13.05.1979. Ten years later, an application under Order I Rule 10 of C.P.C., came to be filed to bring some third parties, as respondents, in the final decree proceedings. An objection came to be raised stating that after the death of the seventh defendant, L.R. application should have been filed under Order XXII Rule 4 of C.P.C., and not under Order I Rule 10 of C.P.C. After considering the judgment of Privy Council in *Lachmi Narayan v. Balmakund*² and other judgments, this Court held that since the seventh defendant died after the preliminary decree was passed, an application to bring his legal

¹ (1993) 2 ALT 95

² AIR 1924 P.C. 198

representatives under Order XXII Rule 3 of C.P.C., need not be made, but an application under Order I Rule 10 of C.P.C. to add the parties is maintainable.

8) In *Nima Kaur v. Surjith Singh and others*³, this Court, while dealing with an identical situation, held as under:

“It is amply clear that as long as the partition suit is pending and until a final decree is actually passed, application for impleading a party is maintainable. That a duty is cast on the Court in a partition suit to adjudicate upon the claims of all the parties who claim a share in the subject matter of the suit and that there is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if circumstances justify the same. It is not only convenient to the Court and advantageous to the parties, specially in partition suits to have disputed rights finally settled before a final decree is prepared.

The construction of the language of Order I Rule 10 (2) C.P.C. requires that the same should not be restricted merely to the parties involved in the suit, but that an attempt should be always to make parties, all persons who may be necessary in order that there might be a final and complete adjudication of the points involved in the suit, specially so, in a suit for partition.”

9) In *Kishan Lal and others v. Nathi Lal*⁴, the Delhi High Court was dealing with a situation where a revision petition was preferred by the legal representative of Nanhay Ram, who

³ (1997) 5 ALT 183 (S.B.)

⁴ ILR 1971 Delhi 547

instituted a suit against one Nathi Lal for recovery of amount due under mortgage. It was also a case where a decree was passed on 21.07.1964 and after passing of the decree Nanhay Ram died on 22.09.1964. Thereafter, an application was made by the petitioner therein to implead him in the suit. An objection was raised with regard to maintainability of the application under Order XXII Rule 3 of C.P.C. One of the issues in the said case was; whether Order XXII Rule 3 of C.P.C. can be invoked after passing of the preliminary decree. After referring to various judgments, the Court held that “Once a preliminary decree is passed, there is no necessity to make an application under Order XXII Rule 3 of C.P.C., to implead the legal representatives of the deceased/plaintiff and there is no time limit to implead such representatives.” The Court further held that “the situation can only be met by passing an order under Section 151 of C.P.C., allowing the legal representatives to be impleaded in place of the deceased plaintiff so that they may be in a position to move the Court for passing of a final decree.”

10) In *N.P.Thiruganam v. R.Jagan Mohan Rao*⁵, the Apex Court held as under:

“In the face of the explicit language in Rule 6 of Order 22, there can be no abatement by reason of the death of any party between the conclusion of the hearing and the pronouncement of the judgment. It may be pronounced, notwithstanding the death, and shall have the same force and effect as if Judgment

⁵ (1996) AIR SC 116

had been pronounced before the death took place. Therefore, the contention that the judgment and decree of the appellate Court is a nullity is devoid of substance.”

11) In *Golla Krishna Murthy v. Golla Yellaiah (died) per his L.R.s*⁶, a Division Bench of this Court was dealing with a situation where the first appeal was heard after the death of the plaintiffs. The question before the Court was; whether the judgment delivered in appeal, which was heard after the death of a party, was in nullity, or not. After referring to the judgment of the Apex Court in *N.P.Thiruganam v. R.Jagan Mohan Rao (5 supra)*, this Court held that in view of the clear pronouncement of the Supreme Court, the contra is also correct, that if the party had died before the conclusion of the hearing, the judgment rendered would be nullity.

12) From the judgments referred to above, it is clear that after passing of the preliminary decree, the proceedings shall not get abated. A reading of Order XXII Rule 6 of C.P.C., clearly states that notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncement of the judgment. Since hearing is already over and preliminary decree is also passed, the question of proceedings getting abated, due to death of the plaintiffs after passing of preliminary decree and before passing of the final decree, would not arise.

⁶ 2001 (5) ALT 645 (D.B.)

13) Hence, this Court is of the view that an application to bring the legal representatives of the deceased need not be under Order XXII Rule 3 of C.P.C., but an application under Order I Rule 10 of C.P.C., to add them as parties is maintainable.

14) Accordingly, I see no reasons to interfere with the impugned order passed by the trial Court and the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

27.01.2017

Note: L.R. Copy to be marked.

B/o

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JUSTICE C. PRAVEEN KUMAR

