

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 416 of 2018

ORDER:

1) Aggrieved by the order, dated 03.11.2017, passed in I.A.No.1706 of 2017 in F.D.I.A.No.210 of 2013 in O.S.No.16 of 2002 on the file of the Senior Civil Judge, Pithapuram, wherein an application filed under Order I Rule 10 and Order VI Rule 17 of C.P.C. read with Rule 28 of Civil Rules of Practice, to implead the petitioners as necessary parties in the final decree petition was dismissed, the present Civil Revision Petition came to be filed under Section 115 of C.P.C.

2) The facts which lead to filing of the Civil Revision Petition would show that one P.V.Chiranjeevi, who is the second petitioner herein along with another made an application for passing of final decree by appointing an advocate commissioner for partition of suit schedule property, as they are the legal representatives of one P.Sri Ramulu, who died on 10.09.2016, leaving behind the petitioners. It is said that a preliminary decree was passed in O.S.No.16 of 2002 in favour of their father. It is also said that a registered will deed dated 04.08.2015 came to be executed in their favour by their father with sound and disposed state of mind. As such, they filed an application for adding them as necessary parties in the final decree proceedings, since the estate of the deceased plaintiff devolved upon them in pursuance of the registered will deed dated 04.08.2015. The said application was filed under Order I Rule 10 and Order VI Rule 17 read with Section 151 of C.P.C. and Rule 28 of the Civil Rules of Practice.

3) A counter came to be filed stating that the provisions of law quoted are incorrect and two prayers cannot be made in a single petition. It is further stated that without filing a registered Will Deed and in proof thereof, the petition is not maintainable.

4) After considering the rival submissions made, the Court below dismissed the said petition. Challenging the same the present Civil Revision Petition came to be filed.

5) Learned counsel for the petitioner would contend that the Court below erroneously dismissed the petition holding that the petitioners have to file a petition under Order 22 of C.P.C. and not under Order I Rule 10 of C.P.C. It is further urged that the sole plaintiff died on 10.09.2016 and the present application filed on 04.11.2016, within time, as such the question of abatement would not arise.

6) Learned counsel for the respondent opposed the same.

7) As seen from the record, the application of the petitioners came to be rejected mainly on the ground that the petitioners ought to have filed a petition under Order 22 of C.P.C. and instead of doing so, the petitioners filed a petition under Order I Rule 10 of C.P.C. The main ground in which the application is dismissed is that the suit got abated and without getting abatement set aside the legal representatives cannot be brought on record. It is further observed that though the first petitioner died, the second and third petitioners, who are co-sharers, have not taken steps and consequently the final decree petition against the first petitioner gets abated.

8) In *Kishan Lal and others v. Nathi Lal*¹, the Delhi High Court was dealing with a situation where a revision petition was preferred by the legal representative of Nanhay Ram, who 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.”

9) In *N.P. Thiruganam v. R. Jagan Mohan Rao*², 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

¹ ILR 1971 Delhi 547

² (1996) AIR SC 116

the same force and effect as if Judgment 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.”

10) In *Golla Krishna Murthy v. Golla Yellaiah (died) per his L.R.s*³, 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 (2 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.

11) From the judgments referred to above, it is clear that after passing of the preliminary decree, the proceedings shall not get abated.

12) It is to be noted here that the first petitioner before the trial Court died on 10.09.2016 and within a period of sixty days ie. on 04.11.2016, an application to implead them as legal representatives and necessary parties came to be filed. That being the position, the finding of the trial Court that the suit got abated and consequently, the final decree petition gets abated, appears to be incorrect. As the application came to be filed within the prescribed time, the present application can be treated as one under Order 22 Rule 3 of C.P.C.

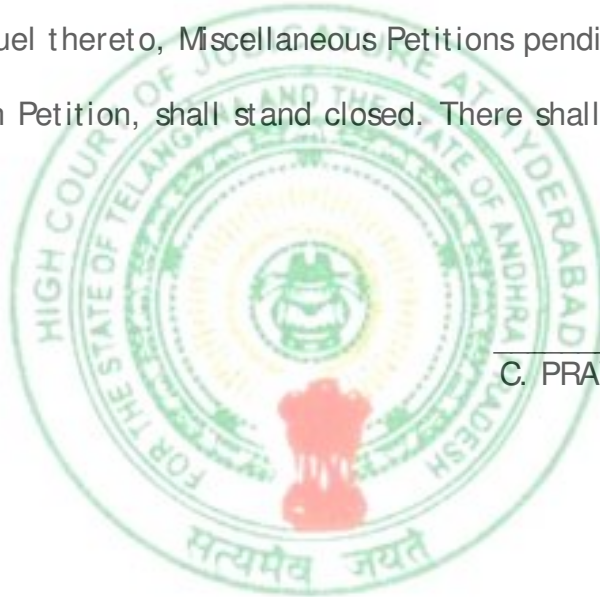
³ 2001 (5) ALT 645 (D.B.)

13) In view of the judgments referred to above, 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, the order under challenge is set aside and the trial Court is directed to permit the petitioners to come on record as legal representatives of the first petitioner.

15) With the above direction, the Civil Revision Petition is disposed of. As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed. There shall be no order as to costs.

23.02.2018
gkv



C. PRAVEEN KUMAR, J