

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos. 268 and 463 of 2018

COMMON ORDER:

1) C.R.P.No.268 of 2018 is filed, against the order dated 27.12.2017, passed in I.A.No.1258 of 2017 in O.S.No.143 of 2008 on the file of the Principal Senior Civil Judge, Rajamahendravaram, wherein an application filed to set aside the abatement order dated 18.08.2017 against respondent Nos.12 and 13, was dismissed.

2) C.R.P.No.463 of 2018 is filed, against the order dated 27.12.2017, passed in I.A.No.1260 of 2017 in O.S.No.143 of 2008 on the file of the Principal Senior Civil Judge, Rajamahendravaram, wherein an application filed to implead respondents 12 and 13 as defendants 12 and 13 and consequently to amend the long and short cause titles in the suit was dismissed.

3) Since the issue involved in both the Civil Revision Petitions, filed under Article 227 of the Constitution of India, is interconnected, they are disposed of by this common order.

4) The petitioner herein filed O.S.No.143 of 2008 seeking declaration of title and perpetual injunction. When the suit is posted for arguments, the petitioner filed three applications seeking impleadment of the legal representatives of defendant No.1 as defendant Nos.12 and 13 and to set aside the abatement order dated 18.08.2017 along with condonation of delay of 242

days in taking steps. It is stated in the affidavit that defendant Nos.1 to 3 died on 04.01.2017, 13.12.2014 and 07.05.2017 respectively. The legal representatives of defendant Nos.1 and 2 were not brought on record due to lack of proper communication, but however the legal representatives of defendant No.3 were already on record as defendant Nos.9 and 10. Therefore, she filed application to bring the legal representatives of defendant No.1 on record as they are necessary parties to the suit.

5) A counter came to be filed by respondents/ defendants 5 to 10. It is stated in the counter that the allegation of defendant No.1 died leaving behind the proposed parties is not correct and that she is having one daughter by name Vengala Suryakantham, who died leaving behind her two sons and two daughters, who are also necessary parties. Without impleading them, the suit proceedings cannot be properly adjudicated. It is further urged that there is abnormal delay in filing the petitions and the petitioner failed to explain the day today delay in filing the petitions.

6) After considering the rival submissions made, the trial Court rejected the request of the petitioner. Challenging the same, the present Civil Revision Petitions are filed.

7) Learned counsel for the petitioner would submit that she is not aware the about death of defendant No.1 and the defendants failed to inform the Court about the death of defendant No.1, by filing a memo. It is pleaded that only after filing a memo, the

petitioner will take steps to bring the legal representatives of the deceased defendant. Since the said procedure is not followed, learned counsel for the petitioner would submit that there is every justification for condoning the delay in filing the application to bring the legal representatives of defendant No.1 on record.

8) As seen from the record, no such plea was taken in the application filed before the trial Court. For the first time such an objection is taken before this Court. It is his plea that this being a legal issue the same can be raised at any time. But it is to be noted here that the said plea contains some factual aspects namely as to whether the counsel for the defendants filed any memo before the trial Court informing about the death of defendant No.1. Since such plea was not taken, the trial Court was not able to answer the said issue either on legal side or on factual aspects. The docket proceedings from the date of death of defendant No.1 are not filed before this Court to show filing of such memo.

9) Taking into consideration the totality of the circumstances and as the issue involves both legal and factual aspects, the petitioner is at liberty to file a fresh application before the trial Court raising the said issue, in which event the trial Court shall dispose of the same in accordance with law.

10) With the above direction, the Civil Revision Petitions are disposed of.

11) There shall be no order as to costs. Miscellaneous Petitions pending, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

16.02.2018
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