

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

A.S.M.P.Nos.1254, 1255, 1256, 1257, 1258 AND
1259 OF 2016, I.A.NO.01 OF 2018
IN/AND
APPEAL SUIT No.950 OF 2011

JUDGMENT:

A.S.M.P.No.1254 of 2016 is filed to condone the delay of 223 days in filing the application seeking setting aside the abatement of the death of 5th respondent – Chalapathi Venkateswar Rao in A.S.No.950 of 2011, A.S.M.P.No.1255 of 2016 is filed to set aside the abatement caused due to the death of 5th respondent in the above suit, A.S.M.P.No.1256 of 2016 is filed to implead LR of deceased 5th respondent, proposed respondents 15 to 17, A.S.M.P.No.1257 of 2016 is filed to condone delay of 30 days in filing the application seeking setting aside the abatement of the death of sole appellant – Gutta Ammaji in the above suit, A.S.M.P.No.1258 of 2016 is filed to bring on record the petitioner, daughter of the sole plaintiff/Gutta Ammaji, by name Bhavana Viswanath, as second appellant to the suit.

2. Heard both sides.

3. For the reasons stated in the accompanying affidavits, the above said A.S.M.P.s are allowed, by condoning the delay, setting aside the abatement, bringing on record the second appellant as LR of sole appellant and R15 to R17 as LR of late R5. Registry is directed to carry out the necessary amendments.

4. Consequent to the amendments ordered supra, the application in I.A.No.01 of 2018 of the second appellant – sole legal heir of the first appellant, since died, is to withdraw the appeal with liberty to file a comprehensive suit, including to question the several alienations of part of the property covered by the present suit for the reliefs of declaration of the sales effected in respect of the plaint schedule properties as null and void and for consequential partition of the properties into three equal shares and to allot one such share to her with separate possession, by setting aside the alienations holding as null and void and not binding.

5. R5 is claiming as adopted son of late R1. Late R3 is no other than of husband of late R1. R2 is sister of plaintiff. R6 to R14 are the alinees. R15 to R17 supra are LR's of late R5 supra.

6. The averments in the petition, in seeking withdrawal of the appeal with liberty to file a comprehensive suit, are that in view of the observation of the trial court with reference to Exhibit A7 Will of first defendant got life interest and the suit is premature in her lifetime, as the main ground for dismissal, which is impugned in the present appeal among other grounds. There is a fresh material discovered and instead of seeking the amendments, it is advised to file a fresh suit comprehensively by including all properties covered under Exhibit A7 Will stating not included in the present suit

covered by the appeal lis, thereby seeking liberty to file fresh suit.

7. The petition is opposed by R14, saying R14 purchased the suit property from third parties to the suit and R14 unnecessarily brought to the lis, though the property purchased by R14 is not that of the testator of the will executed in favour of R1- 1st defendant, even under the guise of claim of the vested remainder rights by the plaintiff of the properties under the said Exhibit A7 Will, thereby if at all any liberty to be given is not to again drag on R14 to the lis in the fresh suit proposed to be filed. Needless to say, in the event of giving liberty to file a fresh suit, whatever the subjudice in the present appeal findings no way ultimately binding and if at all any impleadment is there, as per the proposed apprehension of R14 in future vexatiously, R14 is not remediless.

8. With the above observations, leave is granted, by permitting withdrawal of the appeal. Parties are entitled to return back their respective documents from the trial court.

9. Accordingly, this appeal suit is dismissed as withdrawn, with the liberty as prayed for. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

DR.B.SIVA SANKARA RAO, J

23.03.2018
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