

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.643 OF 2017

%02.03.2018

Singam Gopala Krishna and two others.

...Petitioners

VERSUS

\$ Singam Narasimloo (died per L.Rs.) and others

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri K.Lakshmaiah

^Counsel for Respondents: M.M.Goud

? Cases referred

1. AIR 1986 ALLAHABAD 49
2. AIR 1987 HIMACHAL PRADESH 1
3. C/SCA/15825/2017
4. AIR 1976 Calcutta 272
5. 2001(3) ALD 670
6. (1921) 41 MLJ 243.



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ORDER:

This revision petition is filed, under Article 227 of the Constitution of India, challenging the order dated 06.12.2016 in I.A. No.1682 of 2011 in O.S. No.1214 of 1980 passed by the I Senior Civil Judge, City Civil Court, Hyderabad, whereby the learned Senior Civil Judge allowed the application filed under Rule 3 of Order XXII read with 151 of the Code of Civil Procedure, 1908 (for short 'CPC').

The petitioners herein are the respondents and the respondent is the petitioner before the court below. The parties will herein referred to as they are arrayed before the court below for the sake of convenience.

The petitioner filed a petition under Rule 3 of Order XXII of CPC to permit her to come on record as legal representative of the deceased plaintiff alleging that her father Singam Narsimloo @ S.Narasimha Rao during his life time filed O.S. No.1214 of 1980 against the respondents seeking 3/10th share in the plaint schedule property and the claim was resisted. The suit was decreed. On 08.04.1993 preliminary decree was passed declaring 1/15th share to the father of the petitioner and thereafter the final decree was passed, by appointing advocate commissioner for division of property into 15 shares and allot one such share to the father of the petitioner. Accordingly, a final decree was passed. In the appeal A.S. No.6 of 1994 filed against the preliminary decree

was confirmed and the second appeal was also dismissed by this court and at this stage the father of the petitioner expired leaving behind him, to succeed his estate. Therefore, she claimed that she is sole legal heir of the deceased plaintiff in the main suit.

The respondents 1, 8 and 9 filed counter denying the material allegations inter alia contending that the relationship between the petitioner and the deceased plaintiff is not known to them and the petitioner married one Syed Malik, since then she is governed by Muslim Law and as such she cannot claim as legal heir of the deceased plaintiff and his sur name was also wrongly mentioned in the petition itself. As the petitioner converted to Islam from Hinduism, she is disentitled to claim inheritance through her father and prayed for dismissal of the petition.

Upon hearing both the counsel, the trial court allowed the petition, permitting her to come on record as legal heir of the deceased plaintiff. Aggrieved thereby, the respondents filed the present revision on various grounds, mainly on the ground that due to the marriage of the petitioner with a muslim gentleman, she converted her religion, thereby she is disentitled to claim right in view of Section 26 of the Hindu Succession Act. But the court below did not consider this aspect in proper perspective and committed an error in permitting her to come on record as the legal heir of the deceased plaintiff and requested to set aside the order passed by the court below.

Sri.K.Lakshmaiah, learned counsel for the respondents/ revision petitioners herein, during hearing contended that on account of her conversion by marrying muslim gentleman, she

ceased to be Hindu and thereby she is disentitled to any share as legal heir of the deceased in the main suit and placed reliance on the judgment of Allahabad High Court reported in **Budh Singh and Others, v. 8th Additional District Judge, Meerut and others**¹ and prayed to allow the revision petition.

Whereas the counsel for the petitioner/ respondent herein supported the order in all respects while contending that the conversion of the petitioner to Islam from Hinduism would not debar her to claim share of her father, but her decendents are alone disentitled, in view of Section 26 of the Hindu Succession Act and placed reliance on the judgment of Himachal Pradesh High Court reported in **Smt.Ram Murti Devi and Others v. M/s.Ralla Ram Tulsi Ram and another**² and another Judgment of Gujarat High Court in **Nayanaben Firozkhan Pathan @ Nasimbanu Firozkhan Pathan v. Patel Shantaben Bhikhabhai & 4 others**³. On the strength of these principles laid down in the above judgments, the counsel for the petitioner/ respondent herein requested the court to dismiss the revision.

There is no dispute regarding relationship between the deceased plaintiff and the petitioner and they are father and daughter. Admittedly she married a muslim gentleman and thereby the contention of the respondents that the petitioner is governed by muslim law from the date of her marriage as she converted into Islam from Hinduism. Even if she converted to Islam from Hindu, Section 26 of the Hindu Succession Act made

¹ AIR 1986 ALLAHABAD 49

² AIR 1987 HIMACHAL PRADESH 1

³ C/SCA/15825/2017

convert's descendants disqualified to claim share in the property of their Hindu relative.

According to Section 26 of the Hindu Succession Act, Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

By virtue of the provision of the Caste Disabilities Removal Act, 1850 the conversion of a Hindu to another religion will not disentitle the convert to his right of inheritance to the property. Even under this Act, the disqualification not to the convert, but to his children born after conversion and their descendants as held by the Calcutta High Court in **Asoke Naidu vs Raymond S. Mulu**⁴. Thus the children born to the converts and their descendants, after such conversion shall be disqualified from inheriting the property of any of their Hindu relatives. Even in the case after conversion, their descendants provides an exception that the disqualification will not apply to them when succession opens. It is to be noted that the disqualification of the children born after conversion, their descendants only inherit the property of their Hindu relative and not to the property of the convert.

A similar question came up before the Gujarat High Court in **Nayanben Firozkhan Pathan's** referred supra held that conversion is not a disqualification to inherit the property of the

⁴ AIR 1976 Calcutta 272

ancestor, but the children born to the convert are disqualified from inheriting the rights. It was further held that the disqualification is not attached to the children who born to the convert and not to the convert, if by the date of opening succession they are ceased to be Hindus.

Earlier in the year 1921, the Madras High Court in **Muthoora Palliath Purakkot Paru v. Muthoora Palliath Purakkot Raman**⁵ held that disqualification is only attached to the children of deceased legal heirs not the converted Hindus to claim right over the property of Hindu relative.

In the other judgment of Himachal Pradesh High Court in **Smt.Ram Murti Devi's** case referred supra, the single judge of Himachal Pradesh High Court held that when a party to the execution petition died during execution proceedings pending, the legal representatives of such person can continue with the execution proceedings, and production of succession certificate is not necessary by invoking Section 214 of Succession Act. Even according to the principle laid down in the Judgment, no succession certificate is necessary to continue the execution proceedings when the original party/ decree holder died during the pendency of the execution petition.

However, a different view is taken by Allahabad High Court in **Budh Singh's** referred supra, wherein it was held that death took place during pendency of execution proceedings. No application for substituting legal representatives is necessary, they can continue execution on information to executing court. But

⁵ (1921) 41 MLJ 243

that is not applicable to the present facts. On the other hand it supports the case of the respondent.

In any view, the contention of the respondent is purely based on Section 26 of the Hindu Succession Act. A bare reading of Section 26 of the Act, it is clear that the disqualification is attached only to the children born to the convert not to the convert, to claim inheritance from the Hindu relative and even the children born to such convert were Hindus by the date of opening succession, their disqualification has no application even to the children of convert.

The main endeavour in this petition is that due marrying muslim gentleman by the respondent, who was the petitioner before the trial court, she ceased to be a Hindu. Even accepting this contention, when she ceased to be a Hindu, it is not a disqualification and it is limited to the children born to convert if they are ceased to be Hindus by the date of opening of succession.

Therefore, it is not a disqualification to the respondent herein to come on record to continue the execution proceedings. Hence, the contention raised by the counsel for the petitioners is without any substance and the revision is devoid of merits. The petitioners are entitled to raise question of limitation in the execution proceedings. The revision petition lacks merit and deserves to be dismissed as I find no legal infirmity, warranting interference of this Court by exercising power under Article 227 of the Constitution of India.

In the result, the revision petition is dismissed confirming the order dated 06.12.2016 in I.A. No.1682 of 2011 in O.S.

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No.1214 of 1980 passed by the I Senior Civil Judge, City Civil Court, Hyderabad. No costs.

Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:02.03.2018

Note: LR copy to be marked.
b/o. BV

