

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1992 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the order dated 06.01.2016 passed in I.A.No.961 of 2015 in O.S.No.68 of 2005 by the VI Additional District Judge – cum – Sessions Judge, Mahila Court, Visakhapatnam, whereby the petition filed by the respondent Nos.1 and 2 herein under Order XXII Rule 4 of Civil Procedure Code (for short “C.P.C.”) to implead the respondent Nos.7 to 9 in I.A.No.961 of 2015 as legal heirs of deceased defendant No.2, was allowed.

The respondent Nos.1 and 2 herein filed a petition under Order XXII Rule 4 of C.P.C. before the trial Court to implead the petitioner and respondent Nos.9 and 10 herein as legal heirs of deceased defendant No.2.

The respondent Nos.9 and 10 herein remained exparte before the trial Court, only petitioner herein/respondent No.7 contested the petition and filed counter raising a specific plea that he is the husband of defendant No.3 – Buddha Chayadevi, but not the husband of defendant No.2, but the trial Court allowed the application without making any enquiry as required under Order XXII Rule 5 of C.P.C.

Aggrieved by the same, the present revision is filed by the respondent No.7 before the trial Court in I.A.No.961 of 2015 in O.S.No.68 of 2005.

During hearing, learned counsel for the petitioner reiterated the same ground urged before the trial Court, whereas learned counsel for the respondents fairly requested this Court to afford an

opportunity to implead any other legal heirs of deceased defendant No.2.

As the petitioner herein is not the husband of defendant No.2, he cannot be impleaded as legal heir of the deceased defendant No.2 Buddha Venkata Ramanamma and in fact he married one Buddha Chaya Devi, sister of deceased defendant No.2. In the cause title, husband names of both defendant Nos.2 and 3 also mentioned, but without looking at the cause title, the trial Court erroneously allowed the petition. Therefore, the petitioner herein cannot be impleaded as legal heir of the deceased defendant No.2. The trial Court without making any enquiry as required under Order XXII Rule 5 of C.P.C. passed the impugned order. Since the impugned order is illegal and contrary to the Order XXII Rule 5 of C.P.C., the same is hereby set aside holding that the petitioner herein is not the husband of deceased defendant No.2 as he is the husband of defendant No.3.

In the result, the civil revision petition is allowed. However, it is left open to the respondents to take appropriate steps to implead the legal heirs of deceased defendant No.2 subject to permissibility under law. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

14.11.2018
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