

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2937 of 2018

ORDER:

- 1) Assailing the order dated 19.03.2018, passed in I.A.No.354 of 2017 in O.S.No.67 of 2012 on the file of the Junior Civil Judge, Kothapeta, wherein an application filed Under Order I Rule 10 and Order 6 Rule 17 read with Section 151 of C.P.C. to add the respondent Nos.2 to 4 as defendant Nos.2 to 4 in the suit and consequently allow the plaintiff to amend the plaint was allowed, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.
- 2) For the sake of convenience the parties will be referred to as they are arrayed in I.A.
- 3) The facts in issue are as under:

The 1<sup>st</sup> plaintiff filed a suit for declaration of his easement right over ABCD pathway and also the consequential relief of permanent injunction. The plaintiffs sought the relief from the first respondent on a surmise that northern side property belongs to him. In the counter the 1<sup>st</sup> respondent stated that the said land was purchased by the wife of the 1<sup>st</sup> respondent by name Sathi Suryavathi. Hence, an application came to be filed by the petitioner to add Smt.

Sathi Suryavathi as 2<sup>nd</sup> defendant. Before ordering the said petition, she died on 24.10.2015. Accordingly, the said petition was withdrawn to get the legal representatives of Smt. Sathi Suryavathi as parties to the suit. It is stated that there are no willful latches or default on the part of the petitioners to implead them at the earliest point of time.

4) A counter came to be filed by the counsel for the 1<sup>st</sup> respondent stating that on 15.07.2016 a memo came to be filed by the defendant's counsel stating that the wife of the 1<sup>st</sup> defendant died after giving notice to the counsel for the plaintiff and it was recorded by the Court on the same day. But, no steps were taken by the plaintiffs to bring the legal representatives of Sathi Suryavathi immediately. No explanation is forthcoming as to why the counsel did not bring the legal representatives of Sathi Suryavathi within 90 days from the date of knowledge. Since the petitioner failed to bring the legal representatives of Sathi Suryavathi, within 90 days, it is said that he has no right to file the present application.

5) After considering the rival submissions the trial Court allowed the said application. Challenging the same the present revision came to be filed.

6) Learned counsel for the petitioners herein mainly submits that the Court below ought not to have entertained

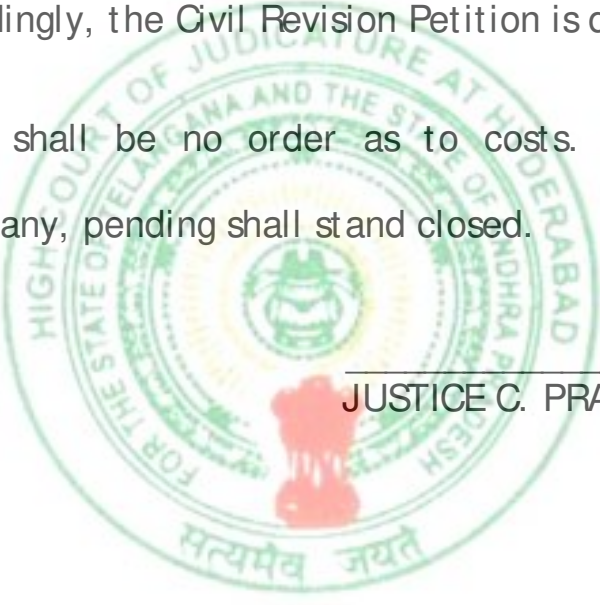
an application under Order I Rule 10 of C.P.C. or under Order 6 Rule 17 of C.P.C., and that an application should have been made under Order XXII Rule 4 of C.P.C. He further submits that in view of the delay, the Court below could not have entertained the application without condoning the delay in filing the present application.

7) It is to be noted that the land was purchased by the wife of the 1<sup>st</sup> defendant. Hence, the petitioner filed an application to add her as 2<sup>nd</sup> defendant in the suit. During pendency of the suit and before the I.A. could be decided, the wife of the 1<sup>st</sup> defendant died. Hence, the said I.A. was withdrawn as not pressed. As stated earlier, the I.A. was withdrawn as not pressed before the said I.A. was decided. Since the wife of the 1<sup>st</sup> defendant has not been added as party to the suit proceedings as 2<sup>nd</sup> defendant, the argument that the suit is abated as it is failure to bring the legal representatives of the wife of the 1<sup>st</sup> defendant does not arise. It is to be noted that the wife of the 1<sup>st</sup> defendant was not added in the main suit. Hence, the provision under Order XXII Rule 4 of C.P.C. is not attracted. The record *prima facie* shows that the wife of the 1<sup>st</sup> defendant was having property on northern side of the pathway. Hence, the Court below felt that the wife of the 1<sup>st</sup> defendant is a necessary party to the proceedings. Since she died, an application to bring her

legal representatives was felt to be very much necessary. Even if the argument of the learned counsel for the petitioners herein is accepted, there is marginal delay in filing the said application. But having regard to the settled proposition of law, reasonable opportunity should be given to the parties to put forth their claim in order to avoid multiplicity of the litigation I feel that the order under challenge warrants no interference.

8) Accordingly, the Civil Revision Petition is dismissed.

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



JUSTICE C. PRAVEEN KUMAR

15.06.2018  
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