

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.3072 of 2018

ORDER:

This Civil Revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner/ plaintiff, assailing the order, dated 25.04.2018, of the learned VII Additional District Judge, Ongole, passed in I. A. no. 113 of 2018 in O.S.no.57 of 2011.

2. I have heard the submissions of Sri *D. Krishna Murthy*, learned counsel appearing for the revision petitioner/ plaintiff. The contesting respondents/ defendants have not entered appearance. I have perused the material record.

3. The facts relevant for consideration, in brief, are as follows:

In the suit for partition, the plaintiff filed the above said interlocutory application for permission to recognize her and the defendants as the legal heirs of the deceased 1st defendant and permit her to carry out consequential amendments in the plaint. In the affidavit filed in support of the said interlocutory application, the plaintiff *inter alia* stated that her father died intestate; that the defendants 2 to 5, who are already on record, are her natural brothers and sisters; that she already filed a memo in the said regard; that the same is pending; that her application filed under Order XXII Rule 10 of the Code of Civil Procedure, 1908, was dismissed, on 18.01.2018; that as all the legal representatives (LRs) are already on record the question of abatement does not arise;

that on advise, she filed IA no. 46 of 2018 for recognizing her and the defendants as the LRs of the deceased 1st defendant; that in the said application, due to accidental slip, she failed to seek permission to make consequential amendments in the prayer portion of the plaint; that there are no wilful laches on her part; hence, she was advised to not press the earlier application and file the subject application; and, hence she filed the present application to recognize her and the defendants as the legal heirs of the deceased 1st defendant and permit her to carry out consequential amendments in the plaint.

4. None of the contesting defendants filed counters opposing the said application of the plaintiff.

5. However, the learned Judge of the trial Court dismissed the application of the plaintiff. Hence the plaintiff is before this Court.

6. Learned counsel for the plaintiff/petitioner reiterated the case pleaded by the plaintiff and submitted that it is settled law that when one of the LRs of the deceased party is already on record representing the estate of the deceased, the question of abatement does not arise and that in the case on hand all the LRs are on record and that the only requirement is to recognize the parties already on record as the LRs of the deceased party and permit the party concerned to make consequential amendment to the plaint and that the learned trial judge for lack of knowledge of fundamentals of civil law erroneously dismissed the plaintiff's application and that in

the facts and circumstances, the order impugned is unsustainable and is liable to be set aside.

7. As rightly submitted when the legal representatives of the deceased party are already on record there is no requirement of bringing on record any of them and the question of abatement does not arise. Further, when one of the LRs of the deceased party is on record, even if there are other heirs & LRs; and, no application for impleading them is made within the period of limitation, the proceeding will not abate. [See: *Mahabir Prasad v. Jage Ram and Ors.* (AIR 1971 SC 742)]. In the instant case, not only one legal representative; but, all the legal representatives of the deceased are already on record. The only requirement is, therefore, filing a memo for recognizing the legal representatives of the deceased already on record. However, apart from a memo, an interlocutory application is also filed for such recognition of the legal representatives, who are already on record, as the plaintiff wanted to seek consequential amendments, in view of the enlargement of shares of the sharers on the death of the 1st defendant. Be it also noted that in a suit for partition the positions of the plaintiffs and the defendants are interchangeable. It is settled law that when one of the legal representatives of a deceased party being on record represents the estate of the deceased *qua* the property in question, there was no necessity for any application for bringing the said legal representative of the said deceased party on record. Such proceedings in the circumstances could not be regarded as having

abated on the death of that party during the pendency of the proceeding. [See: Mohammad Arif v. Allah Rabbul Alamin and Ors. (AIR 1982 SC 948)]. Further, in the instant case, as the plaintiff and the defendants, who are the heirs of the deceased Defendant no.1, are the persons with vital interest in the outcome of the suit, application of the present nature has to be approached keeping in mind that the Courts are meant to do substantial justice between the parties and that technical Rules or procedures should not be given precedence over doing substantial justice. Undoubtedly, justice according to the law does not merely mean technical justice but means that law is to be administered to advance justice. [See: Pankajbhai Rameshbhai Zalavadia vs. Jethabhai Kalabhai Zalavadiya (Deceased) through L.Rs. and Ors. (AIR 2018 SC 490)].

8. On the above analysis and having regard to the facts & circumstances of the case, this Court finds that the order impugned is liable to be set aside and that the subject application deserves to be allowed.

9. In the result, the Civil Revision Petition is allowed and the impugned order is set aside and as a sequel IA no. 113 of 2018 in O.S.no. 57 of 2011 on the file of the learned VII Additional District Judge, Ongole, is allowed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M. SEETHARAMA MURTI, J

24th August, 2018
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