

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOS.3532 & 5360 OF 2011

COMMON ORDER:

C.R.P. No.3532 of 2011 is filed under Article 227 of the Constitution of India, challenging order in I.A.No.428 of 2011 in O.S.No134 of 2006 dated 01.08.2011 passed by the Principal Senior Civil Judge at Mahabubnagar, dismissing an application filed under Order XXII Rule 3 r/w Section 146 C.P.C, filed to implead the petitioner/third party as plaintiff no.2/legal representative of late Yedma Ram Reddy and for consequential amendment.

C.R.P. No.5360 of 2011 is filed under Article 227 of the Constitution of India, challenging order in I.A.No.454 of 2011 in O.S.No134 of 2006 dated 01.08.2011 passed by the Principal Senior Civil Judge at Mahabubnagar, dismissing an application filed under Order XXII Rule 3 C.P.C, filed by the petitioners, claiming themselves as legal representatives of the deceased Yedma Ram Reddy and sought permission to implead them as plaintiffs 2 to 5 and for consequential amendment.

Both the petitioners in interlocutory applications are claiming that, they are the legatees under the last Will executed in a sound disposing state of mind by late Yedma Ram Reddy, bequeathing his property to the petitioners under two different registered Wills.

The petitioner in I.A.No.428 of 2011 is claiming that late Yedma Ram Reddy executed Will dated 13.09.2006 bearing Registered Document No.91 of 2006, bequeathing the property of late Yedma Ram Reddy, thereby, the petitioner-Smt. T. Lakshmi became the legal representative of the deceased Yedma Ram Reddy. Similarly, the petitioners in I.A.No.454 of 2011 also claiming as legatees under Registered Will dated 27.10.2004. But, the question is whether which of these two Wills is the last Will to claim rights in the estate of late Yedma Ram Reddy who died on 08.05.2011.

The respondents contention before the Trial Court is that, Smt. T. Lakshmi, the petitioner in I.A.No.428 of 2011 claimed that she was the adopted daughter and filed O.S.No.112 of 2006 for declaration and recovery of possession, which ended in dismissal and now, it is pending at the stage of second appeal. Thereby, she cannot come on record as a legatee under the Will at this stage. In I.A.No.454 of 2011, the respondents contention was that, the Will said to have been executed by late Yedma Ram Reddy is not genuine and the petitioners cannot come on record as legal representatives. But, the Trial Court upon hearing both the counsel, dismissed I.A.No.428 of 2011 and I.A.No.454 of 2011, in view of the conflict between both the parties.

No doubt, if a Will was executed by Yedama Ram Reddy in favour of the petitioner in I.A.No.454 of 2011, the legatee under the Will, being the legal representative can come on record. But, the very execution of the two Wills set up by the petitioners on

13.09.2006 and 27.10.2004 is in dispute and unless, the Court decides as to which is the last Will executed by late Yedma Ram Reddy, the dispute cannot be resolved.

In such case, the procedure to be adopted by the Court for determination of question as to legal representative is under Order XXII Rule 5 C.P.C and according to it, where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court, provided that where such question arises before an Appellate Court, that Court may, before determining the questions, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.

Instead of following the procedure prescribed under Order XXII Rule 5 C.P.C, the Trial Court dismissed I.A.No.428 of 2011 and I.A.No.454 of 2011 and approach of the Trial Court is erroneous.

In **Jaladi Suguna (died) through L.Rs v. Satya Sai Central Trust¹**, the Supreme Court held that, filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on

¹ 2008 (7) SCR 734

record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, it can be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject matter of the suit, *vis-a-vis* other rival claimants to the estate of the deceased.

Thus, the Court has to determine as to who is the legal heir of the deceased person, without leaving it open till the hearing of the suit which is summary in nature and it does not confer any right to heir-ship on the legal heir.

A summary enquiry is required to be conducted by the Court to who is the legal representative (vide **Dashrath Rao Kate vs Brij Mohan Srivastava**²). But, the Court below, without conducting any summary enquiry as per Order XXII Rule 5 C.P.C dismissed I.A.No.428 of 2011 and I.A.No.454 of 2011 assigning its own reasons. Therefore, both the orders in I.A.No.428 of 2011 and

² AIR 2002 SC 2096

I.A.No.454 of 2011 are contrary to Order XXII Rule 5 C.P.C and they are set-aside, remanding I.A.No.428 of 2011 and I.A.No.454 of 2011 to the Trial Court to conduct summary enquiry, as required under Order XXII Rule 5 C.P.C and decide as to who is the legal representative of late Yedma Ram Reddy to represent the estate, without conferring any right on them to claim share for limited purpose.

With the above direction, the civil revision petitions are disposed of.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

Date:14.03.2018

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JUSTICE M. SATYANARAYANA MURTHY

