

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 4026 OF 2018

ORDER:

This revision under Article 227 of the Constitution of India is filed challenging the propriety and legality of the order dated 24-04-2018 in I.A.No. 1423 of 2017 in O.S.No. 225 of 2012 on the file of the Court of Additional Senior Civil Judge, Kadapa (for short, 'the Court below').

2. Respondent No. 1 herein filed the abovementioned I.A. under Order 22 Rule 3 of the Code of Civil Procedure (for short, 'CPC') to implead him as plaintiff No. 2 being the sole legal-representative of the deceased plaintiff No. 1-K.Gangamma. The petitioners filed counter affidavit disputing the relationship between respondent No. 1 and the deceased plaintiff No. 1. The Court below by the impugned order permitted respondent No. 1 to come on record as plaintiff No. 2 being the sole legal-representative of the deceased plaintiff No. 1. Feeling aggrieved, the present revision is filed.

3. When the petitioners denied the relationship between respondent No. 1-the proposed plaintiff No. 2 and the deceased plaintiff No. 1 Gangamma, the Court below shall examine the same. According to Order XXII Rule 5 of CPC, 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 question, 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. Thus, in view of Order XXII Rule 5 of CPC, when the

revision petitioners denied the relationship of respondent No. 1 and the deceased Gangamma, the Court below shall determine the same. Instead of resorting to such procedure, the Court below based on the affidavits filed by respondent No. 1 allowed the petition by the impugned order. The impugned order therefore suffers from illegality and the same is liable to be dismissed.

4. The civil revision petition is accordingly allowed setting aside the order dated 24-04-2018 in I.A.No. 1423 of 2017 in O.S.No. 225 of 2012 on the file of the Court below while remanding the matter to it to inquire as to whether or not respondent No. 1 is the legal-representative of the deceased plaintiff No. 1 and record a finding and reasons therefor following the procedure contemplated under Order XXII Rule 5 of C.P.C. Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: 31-08-2018.
JSK

M.SATYANARAYANA MURTHY, J.

