

* HON'BLE SRI JUSTICE S.V.BHATT

+ CIVIL REVISION PETITION No.5130 of 2017

%Dated : 14.03.2018

Dachepalli Prathap Reddy

..... Petitioner

AND

\$ Vangala Bhoom Reddy and others

..... Respondents

! Counsel for Petitioner : Mr.I.Laxmikantha Rao

^ Counsel for 3rd Respondent : Mr. Srinivas Rao

<GIST:

>HEAD NOTE :

? Cases referred :



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ORDER:

Heard Mr.Laxmikantha Rao for petitioner and Mr.Sinivas Rao for 3rd respondent.

The revision petitioner is the plaintiff in O.S.No.27 of 2007. The suit is for specific performance of agreement of sale, dated 31.03.2005 said to have been executed by defendants 1 and 2 in O.S.No.27 of 2007. The 1st defendant died in the year 2007 and the 2nd defendant in January 2016.

The counsel appearing for defendants 1 and 2 in the Court below, filed Memo informing the demise of defendants 1 and 2 and also that the defendants died issueless. The plaintiff, thereafter, filed I.A.No.248 of 2016 under Order 22 Rule 4-A C.P.C. to appoint Administrative General or an officer of Court to represent the estate of defendants 1 and 2, for the cause of action subsists. Respondents 3 to 5 herein opposed appointment of either Administrative General or an officer of the Court to represent the estate of deceased defendants 1 and 2. One of the objections, which has bearing for disposing of either I.A.No.248 of 2016 or the present Civil Revision Petition is that one Aruna wife of Rallabandi Raji Reddy-3rd defendant is the

adopted daughter of deceased defendants 1 and 2. Therefore, it is the case that defendants 1 and 2 died issueless but not without a legal representative, who can represent the estate of deceased defendants 1 and 2 in the suit. The learned trial Judge accepted the objection raised by defendants 3 to 5 and dismissed the application by recording the following findings :-

“As per Order 22 Rule 4-A CPC, the court can appoint administrative general or officer of court to represent the estate of deceased person in a case where the deceased persons are not having any legal heirs or legal representatives. In the instant case admittedly the respondent Nos.1 and 2 are not having issues. But, the respondent No.3 contended that his wife is adopted daughter of respondent Nos.1 and 2. So that she should be given notice to prove whether she is adopted daughter or not, there after as rightly contended by counsel for respondent as per Hindu Succession Act there are three types of class I, class II and class III legal heirs. When there are no legal heirs under class I to class III and the petitioners are orphans, if no body is there on their behalf then only the administrative general can be appointed. It is not the case of the petitioners that whether the deceased persons are not having class II or class III legal heirs. It is for the petitioner to establish that there are no legal heirs of class I to class III. Simply as they have no issues on this ground he cannot ask the court to appoint administrative general. The plaintiff who has filed the suit it is his headache to bring the LR's on record, he cannot directly ask the court to appoint any other person to represent the estate of deceased. Hence, there is no merit in this case. Hence, this petition is hereby dismissed.”

Hence, the Civil Revision Petition.

Mr.Laxmikantha Rao contends that the suit is for specific performance and the cause of action subsist inspite of demise of defendants 1 and 2 and the effort of plaintiff is to ensure representation of the estate of deceased by legal representative and in the absence of legal representative by the administrator or officer under Rule 4-A of CPC, because the suit is for specific performance of agreement of sale, wherein obligations on deceased defendants 1 and 2 are considered by the trial Court. According to him, Rule 4-A enables the Court to appoint Administrator – General or an officer of Court to represent the estate of deceased, as in the case on hand the Defendants 1 and 2 died issueless. In other words he contends that D-1 and D-2 died issueless and requirement for appointing Administrator – General or Officer of Court is satisfied. Even assuming that defendants 3 to 5 have acquired right in the property, the right acquired is subject to the primary obligation of defendants 1 and 2 to discharge the obligation under the suit agreement. Therefore, some one or the other ought to be representing the estate of defendants 1 and 2 *de hors* defendants 3 to 5. Firstly, he prays for allowing the revision and alternatively submits that the parties, if inform that one Aruna wife of 3rd defendant is the legal representative of defendants 1 and 2 as adopted daughter, the plaintiff does not have any objection to bring her on record as legal representative.

Mr.Srinivas Rao contends that the application is misconceived and rightly dismissed by the trial Court; in a suit for specific

performance introducing an officer of Court or Administrative General in the fact situation of this case does not arise, inasmuch as according to the stand taken at the earliest point of time one Aruna is the adopted daughter of defendants 1 and 2 if representation by legal representative is essential. There is difference between Administrative General representing the estate of deceased and legal representative recognized in law representing the estate of deceased. One appointed by Court under Rule 4-A represents the estate, whereas legal representative is an adversarial litigation represents and also contests the case by stepping into the shoes of deceased. So the appointment under Rule 4-A ought to be last of the options, that too when no one satisfying the definition of legal representative under Section 2(11) of CPC could be identified. He prays for dismissing the Civil Revision Petition.

The contentions of learned counsel are taken note of.

In the case on hand, the admitted circumstance is that Defendants 1 and 2 died issueless. Therefore, dying issueless is different from recording that a party to a lis died without having a legal representative. The revision petitioner cannot equate both situations viz., issueless and party died during the pendency of suit has no legal representative.

Order XXII Rule 4-A reads as follows :-

“4-A. Procedure where there is no legal representative:- (1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person

representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court

(a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.”

The object of Rule 4-A is to prevent hardship or suffering to a contesting party, with the demise of his opponent, therefore provides for appointment of Administrator – General or officer of Court to represent the estate of deceased. Rule 4-A plainly reads that (i) a party to suit died during the pendency of suit without having a legal representative; (ii) on an application the Court appoints (a) Administrative General (b) Officer of Court i.e., such other person the court thinks fit to represent the estate of deceased person for the purpose of suit. The consequence of this arrangement is that the Judgment delivered by the court is binding on the estate of deceased. The rule confers discretionary power on the Court and intended to avoid adjudication against dead person. The procedural safeguard in exercising this discretion is available after notice to persons, if any available, having interest in

the deceased's estate. The applicability of rule arises if a party died without having a legal representative. The words 'legal representative' are understood from the definition in Section 2(11) of CPC. While deciding scope and meaning of words legal representative, the Courts have held that the words legal representative mean a person who in law represents the estate of a deceased and includes any person who intermeddles with the estate of a deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The definition of legal representative is inclusive in character and its scope is wide. Interpreting Rule – 4A in the light of definition of legal representative, this Court is of the view that issueless is different from died without a legal representative. In adversarial litigation the appointment of Administrative General or Officer by court ought to be the last of the options.

Thus, an obligation is cast on the Court to verify the necessity of appointing Administrative General or appointing an officer of Court to represent the estate of deceased party.

In the case on hand, for the above reasons, this Court is of the view that the trial Court has rightly rejected the prayer for appointing Administrative General or an officer of the Court at the instance of revision petitioner.

The Civil Revision Petition fails and is accordingly dismissed. The dismissal of Civil Revision Petition ought not to be understood as

shutting out other options available to plaintiff to bring on record the legal representative for whom a reference is made in the pleadings. As and when such application is filed, the trial Court to consider and pass orders in accordance with law.

The trial Court is directed to dispose of O.S.No.27 of 2007 as expeditiously as possible preferably within three months from the date of receipt of copy of this order.

Miscellaneous petitions, if any, pending, shall stand closed.

No order as to costs.

Dt: 14-03-2018

Note:

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Prv



S. V. BHATT, J



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