

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION Nos.2567 & 2568 of 2014

COMMON ORDER:

CRP No.2567 of 2014 is filed questioning the order, dated 26.06.2014, passed in I.A.No.690 of 2014 in CMA.No.16 of 2013, by the IV Additional District Judge, Kakinada.

I.A.No.690 of 2014 is filed to set aside the abatement caused due to the death of the sole appellant, who is the plaintiff in the trial court.

CRP No.2568 of 2014 is filed questioning the order, dated 26.06.2014, passed in I.A.No.691 of 2014 in the very CMA No.16 of 2013.

I.A.No.691 of 2014 is filed to add four petitioners as petitioners/appellants Nos.2 to 5 in the place of the deceased sole appellant. Out of these four proposed petitioners, petitioners Nos.2 to 4 are the actual legal heirs, being wife and children of the deceased sole appellant. The proposed petitioner No.5 is a subsequent purchaser of the property.

The matter was heard in the lower court and both the applications came to be dismissed. Questioning the same, the present revision petitions are filed.

This court has heard Sri M.Subba Reddy, learned counsel for the petitioners and Sri E.V.V.S.Ravi Kumar, learned counsel for the respondents.

The application I.A.No.690 of 2014 was essentially dismissed on the ground that the proposed petitioner No.5 is not a legal representative of the deceased sole appellant and he is only a purchaser of the property. Similarly, the application I.A.No.691 of 2014 was dismissed by a speaking

order. The application was essentially dismissed on the ground that the proposed petitioner No.5 is a subsequent purchaser. The lower court relied upon the judgment in *Akkarayoyina Apparao v. Korad Ammoru*¹ in dismissing the application.

The learned counsel for the petitioners argues that the lower court committed an error in dismissing the entire application. The learned counsel submits that the court below relied upon judgment of this court in *Akkarayoyina Apparao v. Korad Ammoru* (1 supra), which was held as not laying down the law correctly, by another learned single Judge of this Court in *Dokala Buchiraju v. Dokala Bangaramma(died)*². In addition to this, the learned counsel for the petitioners also points out that the Hon'ble Supreme Court in *Khemchand Shankar v. Vishnu Hari*³ which held that the transferee *pendente lite* has right to be impleaded as a party to the proceedings, and that Order 22 Rule 10 CPC states that he can be impleaded as a party to the proceedings. He further submits that the Hon'ble Supreme Court clearly held that if the purchaser *pendente lite* applies to be impleaded as a party to the proceedings and wishes to be heard, he has to be impleaded and be heard. In addition, the learned counsel submits that the definition of "legal representative" is much wider than the definition of "legal heir" and that the legal representative is the person who intermeddles with the estate of the deceased in any manner. He also argues that the lower court committed an error in dismissing the entire application against all the petitioners, though petitioners Nos.2 to 4 are actual legal heirs, being wife and children of the deceased sole appellant. In the alternative, the learned counsel submits that at best the

¹ 1998 (2) ALD 296

² 1999 (1) ALD 676

³ AIR 1983 SC 124

application should have dismissed against the proposed petitioner No.5 only.

In response to this, the learned counsel for the respondents submits that transferee *pendente lite* is not a legal representative to be brought on record and alternatively that the estate of the deceased is sufficiently represented by the other parties, who propose to come on record.

At the outset, this court notices that petitioners Nos.2, 3 and 4 are the wife and children of the deceased sole appellant. Therefore, they have right to come on record and the lower court committed an error in dismissing the entire application even against petitioners Nos.2, 3 and 4.

In addition, as held by the Hon'ble Supreme Court in *Khemchand Shankar v. Vishnu Hari* (3 supra), when a transferee *pendente lite* applies to be impleaded as a party and wishes to be heard, he shall be impleaded and to be heard. In view of the clear finding of the Hon'ble Supreme Court, this court is of the opinion that the lower court committed an error in passing the impugned orders. Petitioners Nos.2, 3 and 4 who are the wife and children have right to be heard and a right to pursue the matter. The proposed petitioner No.5, transferee *pendent elite*, wishes to come on record as an appellant. In view of the clear finding of the Hon'ble Supreme Court in *Khemchand Shankar v. Vishnu Hari* (3 supra), this court is of the opinion that as far as the proposed petitioner No.5 is concerned, he also has a right to be impleaded. By merely impleading the proposed petitioner No.5, he will not get any rights, except having an opportunity to agitate his case. A transferee *pendente lite* of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be heard

in the matter on the merits of the case. By mere act of impleading the proposed petitioner No.5, no rights are specifically recognized by this court and it is for the proposed petitioner No.5 to establish his rights before the court.

With these observations, both the civil revision petitions are allowed. The impugned orders, dated 26.06.2014, passed in I.A.Nos.690 and 691 of 2014 in CMA No.16 of 2013 are set aside. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 10.12.2018
Dsr

D.V.S.S.SOMAYAJULU,J

