

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No.5182 OF 2018

ORDER:-

This Civil Revision Petition, under Article 227 of the Constitution of India, is directed against the order, dated 05.07.2018, in I.A.No.600 of 2018 in O.S.No.64 of 2015 on the file of the III Additional Junior Civil Judge, Kadapa, whereunder and whereby, the petition filed under Order XXII Rule 3 C.P.C. read with Rules 28 and 29 of the Civil Rules of Practice to implead the proposed plaintiffs as plaintiff Nos.2 and 3 being the legal heirs of the deceased plaintiff, was dismissed.

2. The case of the petitioners, in brief, is as follows:-

The father of petitioner No.2 has filed a suit in O.S.No.64 of 2015 on the file of the III Additional Junior Civil Judge, Kadapa to declare him as Sajjada Nashin (Peetadhipathi) of the plaint schedule Darga and for permanent injunction. During the pendency of the suit, the plaintiff died on 10.02.2018 leaving petitioner Nos.2 and 3 as his legal heirs, who are his son and wife respectively. After the death of the father of petitioner No.2, petitioner No.2 is entitled for the relief as he is fully qualified and eligible to discharge the functions of Sajjada Nashin. Therefore, the revision petitioners have filed a petition to implead them as plaintiff Nos.2 and 3 in the suit.

3. Respondent No.1, who is defendant No.1 in the suit, has opposed for impleading the petitioners as plaintiff Nos.2 and 3 as the legal heirs of the deceased plaintiff, as the relief to declare the

deceased plaintiff as Sajjada Nashin is for the post and not for either movable or immovable properties. As such, the proposed parties are not entitled to come on record as legal representatives of the deceased plaintiff.

4. The learned trial Judge has taken a view that under Order XXII Rule 1 C.P.C., if the right to sue survives after the death of plaintiff or defendant, they are entitled to come on record as legal representatives of the deceased. The trial Court held that right to sue automatically ceases to exist since the original plaintiff filed the suit to declare him as Sajjada Nashin as it is his personal status. The trial Court has dismissed the petition on the ground that the cause of action does not survive for the legal heirs of the deceased plaintiff to come on record.

5. Learned counsel for the petitioners submits that Sajjada Nashin is a hereditary post and the eligible persons of the family would succeed to that post being survivors and that the petitioners want to come on record as the legal representatives of the deceased plaintiff, as the eligible person would be entitled to hold that post.

6. Learned counsel for respondent No.1 submits that Sajjada Nashin is a post of Peetadhipathi and eligible person is only entitled to hold that post; that the father of petitioner No.2 has filed a suit to declare him as Sajjada Nashin of the plaint schedule Darga and for permanent injunction and during the pendency of the suit, he died and that the right to sue does not survive after his death as the post would be given to a person who is eligible.

7. Learned counsel for respondent No.1 placed reliance on an order, dated 05.10.2017, of this Court rendered in C.R.P.No.3656

of 2017 wherein this Court, placing reliance on a decision of a Division Bench of Rajasthan in **Ikramul Haq Shah vs. The Board of Rajasthan Muslim Waqfs and others [AIR 1973 Rajasthan 57 (DB)]**, held at para Nos.5 and 7 as under:

“5. In Ikramul Haq Shah vs. The Board of Rajasthan Muslim Waqfs and others a Division Bench of High Court of Rajasthan happened to discuss the status and also the distinction between Sajjadanashin and Mutawalli. They observed that Sajjada Nashin of a Khankah was a central figure in the institution having powers both of Mutawalli and Sajjada Nashin. The mode of succession to the Khankah is concerned, after the death of the last incumbent, the spiritual line extends to the number of Sajjada Nashins, who are generally members of his family chosen by him and according to the direction given by him and failing which, are chosen by his followers and murids. It was observed, his position was just analogous to that of a Mahant of a Hindu Math who exercises both religious and secular powers of management over the institution. The difference between a Mutawalli and a Sajjadanashin is that the former is a secular officer whereas the latter is a spiritual teacher.

7. In that view of the matter, the trial Court rightly observed the subject matter in the suit being not for immovable property, the petitioners who claim equal right over suit schedule property, have to file a separate suit to vindicate their rights but they cannot seek for impleadment in the present suit.”

8. In the present revision, the petitioners have filed the petition before the trial Court under Order XXII Rule 3 C.P.C. The said provision reads that where one or two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. Learned counsel for the petitioners and the learned counsel for respondent

No.1 have not disputed that the post of Sajjada Nashin is a hereditary post subject to the eligibility of the survivors of the plaintiff or the defendant. The deceased plaintiff has filed the suit for declaring his right as Sajjada Nashin and for permanent injunction. During pendency of the suit, he died. Therefore, petitioner Nos.2 and 3, who are his legal heirs surviving, intended to come on record. In view of the fact that the post of Sajjada Nashin is a hereditary post subject to the eligibility, petitioner Nos.2 and 3 can come on record as legal heirs of the deceased plaintiff to continue the suit on his behalf.

9. Learned counsel for respondent No.1 submits that respondent No.1 has already filed a suit in O.S.No.118 of 2013 on the file of the III Additional Junior Civil Judge's Court, Kadapa to declare him as Sajjada Nashin and also for permanent injunction against the deceased plaintiff and petitioner No.2 herein; that since it is submitted that both the suits were clubbed together for trial, the parties may agitate their rights before the trial Court in both the suits and that the trial Court would decide the same on merits as to the entitlement of the parties.

10. Considering the facts and circumstances of the case, the Civil Revision Petition is allowed setting aside the order, dated 05.07.218, in I.A.No.600 of 2018 in O.S.No.64 of 2015 on the file of the III Additional Junior Civil Judge, Kadapa, permitting petitioner Nos.2 and 3 to come on record as plaintiff Nos.2 and 3, being the legal representatives of the deceased plaintiff, to contest the suit filed by the deceased plaintiff. There shall be no order as to costs.

11. Miscellaneous Petitions pending, if any, in this Civil Revision
Petition shall stand closed.

JUSTICE GUDISEVA SHYAM PRASAD

Date : 26.11.2018
AMD



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



CIVIL REVISION PETITION No.5182 OF 2018

Dated: 26.11.2018

AMD