

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2014 OF 2017

ORDER:

This civil revision petition is filed under section 115 of civil procedure code challenging the order in I.A.No.310 of 2016 in O.S.No.67 of 1990 dated 04.03.2017 passed by the Additional Senior Civil Judge, Anantapur, wherein the Court below appointed an Advocate Commissioner for division of the property in terms of the preliminary decree.

The respondents obtained a preliminary decree for partition of the property in the year 1992 and later filed I.A.No.310 of 2016 under Order XX Rule 18 C.P.C. to pass final decree in terms of preliminary decree in the year 2016. During the period 1992 to 2016, the defendants 2,3 & 10 died and respondents 15 to 19 who are the legal representatives of the deceased defendants came on record. The plaintiff also died leaving behind him, his children who are impleaded as defendants 12 to 14 in the main petition.

The main objection raised by the learned counsel for the petitioner herein is that when parties to the preliminary decree died and unless their children are brought on record as legal representatives of the deceased, the petition for passing final decree is not maintainable by straightaway impleading them to the petition. It is contended that the Trial Court did not consider the objection and passed the impugned order. Aggrieved by the order passed by the Trial Court, the present civil revision petition is filed on the same ground which, i.e the petitioner urged before the Trial Court.

During hearing, learned counsel for the petitioner reiterated the ground raised in the petition and contended that, without filing an petition under Order XXII Rule (2) or (4) C.P.C the parties cannot be brought on record directly and thereby, the petitioner is disentitled to claim any relief in the petition and prayed to set-aside the same.

Whereas, learned counsel for the respondents supported the order of the Court below in all respects by placing reliance of the judgement in **Ausali Siddiramulu (died) per LRs and others v. Ausali Dubbaiah (died) per LRs and others**¹ to contend that, when a preliminary decree is passed, question of attachment does not arise and from the date of filing memo in compliance of Order XXII Rule 10A C.P.C. the parties can be impleaded to the pending proceedings.

The undisputed facts are that, a preliminary decree is passed in the year 1992 and thereafter, no proceedings were initiated for passing final decree under Order XXII Rule 18 C.P.C., but filed petition in the year 2016 for passing final decree. During intervening period from 1992 to 2016, the plaintiff and defendants 2,3 & 10 expired, but the present petition is filed impleading the legal representatives directly by themselves without filing any petition under Order XXII Rule (2) or Rule (4) C.P.C to bring them on record as legal representatives of the deceased plaintiff and defendants 2,3 & 10.

The main defence set-up by the learned counsel for the petitioner is that, without adding the legal representatives by following Order XXII Rule 2 or 4 C.P.C., the petitioners cannot straightaway approach the Court and file an application under Order XX Rule 18 C.P.C. for passing a final decree. Impleading the legal representatives of deceased plaintiff and defendants 2,3 & 10 directly as respondents is not in dispute. Now

¹ 2014 (1) ALD 550

the question is whether the petitioner straightaway filed an application against the legal representatives of the deceased plaintiff and deceased defendants 2,3 & 10 without invoking Order XX Rule 2 and Rule 4 C.P.C, is maintainable?

Order XXII C.P.C. deals with death, marriage and insolvency of the parties. Order XXII Rule 2 C.P.C deals with the procedure where one of several plaintiffs or defendants dies and right to sue survives and according to it, where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Therefore, when a person who is a party to the proceedings dies, the legal representatives have to be added during pendency of the suit or during pendency of the proceedings. But the question is, what is the procedure to be followed when the proceedings or suit is terminated and pending for final decree. In such case, the question of abetment after passing preliminary decree would not arise normally.

Here, the petitioner being the defendant suffered a preliminary decree for partition in the suit filed by the plaintiff who is the predecessor of respondents 12 to 14, who are the legal representatives of plaintiff.

Similar question came up before this Court in **R. Vengal Reddy (died) R. Raghupathi Reddy v. R. Subramanyam Reddy (died)**² wherein, the single Judge of this Court held that after passing of the preliminary decree, the proceedings shall not get abated. But, the legal

² 2017 (3) ALT 101

representatives of the deceased have to be brought on record by following the procedure contemplated under Order 1 Rule 10 C.P.C. The consistent view expressed by various Courts in the judgements referred supra is that, a petition is required to be filed to implead the legal representatives of the deceased. In **T. Ravi v B. Chinna Narasimha and others**³ the Apex Court reiterated the same principle.

In view of the law declared by Apex Court and this Court, when a party to the suit dies after passing preliminary decree or before passing final decree, any party can bring the legal representatives of the deceased plaintiff or defendant by invoking Order XXII C.P.C, but they cannot be straightaway impleaded without filing any application to implead such person.

Once preliminary decree is passed it cannot be said that the cause of action dies along with the person nor dies, it require that the legal representatives should claim the cause of action by being brought on record within the period of limitation prescribed. In other words on account of the passing of the preliminary decree the right stands recognised by the Court. All that is required is that the final decree proceedings should be taken up at the instance of the party claiming and in that view there is no question of any abatement nor does it require that the abatement be set aside. The provision of Order XXII Rule 3 & 4 C.P.C does not apply to a case where the holders dies after passing a preliminary decree. (vide **T. Mangaraju v. K. Ganamma**⁴)

It is clear that, when a preliminary decree is passed either for partition or in any other proceedings where the preliminary decree is required to be passed, the procedure to be followed is to implead the legal representatives of the deceased plaintiff or defendant by following

³ 2017(3) SCALE 740

⁴ 1979 (1) APLJ 54 (NRC)

necessary procedure laid down under C.P.C., but they cannot be directly brought on record without filing any such application Order XXIII Rule (2) C.P.C. or under Order XXII Rule (4) C.P.C. In the present case, the legal representatives of the deceased plaintiff and defendants 2, 3 and 10 were directly brought on record.

In the judgement relied on by the learned counsel for the respondents in **Ausali Siddiramulu** (referred supra), the learned single Judge in paragraph 23 held that, the purpose of filing a final decree petition is to ensure that a Commissioner is appointed to divide the property by metes and bounds and to determine profits, if any, awarded in the preliminary decree. The petitioners therein intended that all the affected parties be informed of the final decree proceedings so that they may not suffer and the final decree is not passed behind their back. In the said case, admittedly, all the legal representatives of the deceased respondents 4-6 were shown as respondents in the final decree petition I.A. No. 493 of 2003. In my opinion, it would merely suffice if they impleaded the legal representatives of the deceased respondents 4-6 in it, which they did. No exception can be taken to this.

The observation in paragraph 23 at best made it clear that impleadment of the legal representatives of the deceased is suffice in final decree petition. But, whether such impleadment is to be done by invoking Order XXII C.P.C is not clear.

Thus, in the absence of consideration of Order XXII Rules 2, 3 & 4 C.P.C, it is difficult to accept this contention in view of the judgement of the Apex Court in **T. Ravi**³ case.

Hence, the order passed by the Court below is set aside. However the petitioner is directed to file appropriate application under Order XXII C.P.C. to implead the legal representatives of the deceased plaintiff and defendants 2, 3 & 10 and on filing such application, the Additional Senior Civil Judge, Anantapur, after affording sufficient opportunity to both the parties, is directed to decide such application in accordance with law, as expeditiously as possible, in any event, not later than six months from the date of receipt of copy of this order, as the suit is age old.

With the above direction, the civil revision petition is allowed.

Consequently, miscellaneous applications pending if any, shall stand closed.

Date:14.02.2018

SP



JUSTICE M. SATYANARAYANA MURTHY