

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5877 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed assailing the order, dated 24.07.2018, passed in I.A.No.216 of 2018 in O.S.No.66 of 2015 by the learned III Additional Junior Civil Judge, Nellore.

2. I have heard the submissions of learned counsel for the 2nd petitioner/proposed 2nd plaintiff.

3. Since this Court is inclined to dispose of the revision petition at the stage of admission, no notice is ordered to the respondent/defendant.

4. From the submissions made and the material record, the following facts are discernible:

‘The sole plaintiff, who is a married daughter of the proposed 2nd plaintiff, filed the suit against the defendant for eviction and recovery of vacant possession. During pendency of the suit, she died on 17.02.2017. Thereafter, her father, the proposed 2nd plaintiff, filed three interlocutory applications, one for condonation of delay, the other for setting aside the abatement caused due to the delay in bringing on record the legal representative of the deceased sole plaintiff, and the instant interlocutory application i.e., I.A.No.216 of 2018 to accord permission to him for his impleadment as the 2nd

plaintiff, as he is the father of the deceased sole plaintiff. The trial Court allowed the applications for condonation of delay and the application seeking to set aside the abatement. However, by the impugned order, the instant application was dismissed and permission was not accorded to the father of the sole plaintiff to come on record as the 2nd plaintiff, for the reason that he is not Class-I legal heir of his deceased daughter, as she is a married woman.'

5. Learned counsel for the proposed 2nd plaintiff submits as follows:

'The whereabouts of the husband of the deceased sole plaintiff i.e., the son-in-law of the proposed 2nd plaintiff are not known since a period of more than 7 years. Therefore, there is a presumption under law that he is no more. The deceased sole plaintiff had no issues. The property was acquired by her from her parents. As per law, in the absence of any son or daughter (including the children of any pre-deceased son or daughter), the subject property of the deceased sole plaintiff, who is a female Hindu and who died intestate, devolves not upon the other heirs referred to in sub-section (1) of Section 15 of the Hindu Succession Act, 1956, but upon the father. Therefore, the impugned order may be set aside and I.A.No.216 of 2018 may be allowed'.

6. I have given my earnest consideration to the facts and submissions.

7. Admittedly, it is not stated in the affidavit filed before the trial Court that the whereabouts of the husband of the deceased sole plaintiff are not known since a period of more than 7 years. Further, whether the property was inherited by the deceased sole plaintiff, from her father or her mother or from any other source, is a question of fact, which requires examination, in detail. In that view of the matter, this Court is of the considered view that an enquiry is necessary into the said interlocutory application i.e., I.A.No.216 of 2018 on the above aspects before a decision is finally taken in the matter.

8. On the above analysis, this Court finds that the impugned order can be set aside and the matter may be remitted to the Court below for an appropriate enquiry into the subject interlocutory application.

9. In the result, the revision petition is allowed. The impugned order is set aside and I.A.No.216 of 2018 in O.S.No.66 of 2015 on the file of the III Additional Junior Civil Judge, Nellore, is remitted to the trial Court for disposal afresh, after conducting an enquiry by following the procedure established by law.

There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

M.SEETHARAMA MURTI, J

16.11.2018
v v