

THE HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

CIVIL REVISION PETITION No.6693 OF 2017

Date:23.02.2018

Between:

Karlapudi Venkata Naveen S/o.K.S.K.V.Prasada Rao,  
Aged about 33 years, Occ: Software Engineer,  
P/o.Flat No.102, Pooja Residency, Plot No.521, 522,  
Matrusri Nagar, Zenas International School Road,  
Miyapur, Hyderabad.

...Petitioner

Vs.

Tatineni Surendra S/o. Subba Rao,  
Aged 39 years, Occ: Agriculture,  
P/o.Poranki Village, Penamaluru Mandal,  
Krishna District and others.

... Respondents

Counsel for Petitioner : D.V.N. Acharya

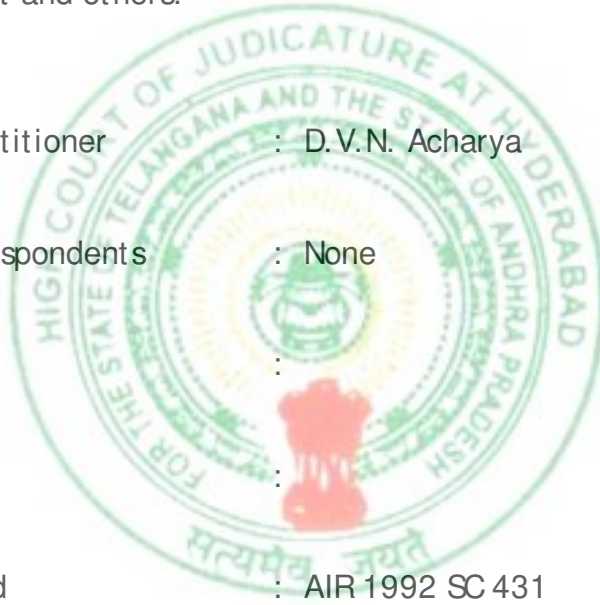
Counsel for Respondents : None

Gist :

Head Note :

Cases Referred : AIR 1992 SC 431

Overruled : 1998 (2) ALD 296



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ORDER:

Aggrieved by an order passed by the trial Court allowing an application under Order 22 Rule 3 CPC to implead them as defendants 40 to 43, the plaintiff in the suit for partition has come up with the above revision.

2. Heard Mr. D.V.N. Acharya, learned counsel for the petitioner.

3. The main objection of the petitioner to the impleadment of the respondents 40 to 43 is that they are not the natural legal heirs of the deceased 1<sup>st</sup> defendant and that they claimed to be legal representatives, by virtue of an alleged Will said to have been executed and registered on 20.10.2004 and that therefore, their remedy will have to be worked out independently.

4. But, I do not agree. Order-22 Rule 3 CPC uses the expression 'legal representative'. The expression 'legal representative' is defined in Section 2(11) CPC not merely to include a person who in law represents the estate of the deceased, but also a person who intermeddles with the estate of the deceased. Therefore, the expression 'legal representative' appearing in Order 22 Rule 3 CPC cannot be given the restricted meaning, when the definition of the expression has found in Section 2 (11) CPC is very clear.

5. Learned Counsel for the petitioner relies upon the decision of the Supreme Court in Smt. Ambalika Padhi vs. Sh.Radhakrishna Padhi<sup>1</sup>. But, the said decision is of no avail to the petitioner, as the said decision arose out a suit for declaration of title. It is in that context that the Court held that where the subject matter of the suit is right to property,

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<sup>1</sup> AIR 1992 SC 431

the legal representatives cannot be permitted to continue the suit if they are not the natural heirs.

6. The learned counsel for the petitioner also relies upon a judgment of this Court in Akkarayoyina Apparao vs. Korad Ammoru<sup>2</sup>. But in the said case, the learned Judge himself pointed out that a person who becomes a legal representative by way of succession is entitled to impleadment. Succession can happen in two ways, one by way of testamentary instruments and another by way of intestate succession. The claim of a person on the basis of a Will would fall under the category of testamentary succession.

7. As a matter of fact, the Court below exercised caution and pointed out that their impleadment as parties to the proceedings is subject to their proof of the Will during trial. If the Will is not proved during trial, two consequences would follow. The first is that they will have no say in the suit. The second is that they cannot even file an independent suit and trouble the present revision petitioner.

8. Therefore, the Civil Revision Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

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V. RAMASUBRAMANIAN, J

February 23, 2018  
KTL

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<sup>2</sup> 1998 (2) ALD 296