

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No.6703 of 2017

ORDER : (Oral)

Vide the present petition, the petitioners have assailed the order dated 23rd September 2017, passed in I.A.No.1283 of 2016 in O.S.No.171 of 2009, whereby, the petition filed by the proposed 7th plaintiff, namely Dr.Jagarlamudi Praveen, under Order XXII Rule 1 r/w. Order VI Rule 17 r/w. Order I Rule 10 of CPC and Section 151 of CPC, to add his name as Managing Trustee and Ex-officio Chairman of plaintiffs 1 and 2 in the place of Jagarlamudi Narendranath and also add his name as 7th plaintiff in the suit and to make consequential amendments with his affidavit to the effect that he is the 7th plaintiff and Managing Trustee and Ex-officio Chairman of Plaintiffs 1 and 2, is allowed.

2. Counsel for petitioners submitted that the proposed 7th plaintiff is son of Late Jagarlamudi Narendranath/3rd plaintiff, who died on 01.06.2014. However, no memo was filed in the Court and no legal representative application was filed within 90 days therefrom, and no application to set aside the abatement order was filed. It is further contended that the provision of law mentioned in the petition is not at all certain, as it contains Order

XXII Rule 1 r/w. Order VI Rule 17, Order I, Rule 10 and Section 151 of CPC, when the suit itself is for declaration that 3rd plaintiff is the Managing Trustee of the 1st plaintiff and Ex-officio Chairman of 2nd plaintiff and also for consequential permanent injunction against defendants 1 to 5 not to interfere with their discharge of duties in the administration of plaintiffs 1 and 2. The petition is filed as if 3rd plaintiff, who is now no more, is already recognized as Managing Trustee of 1st plaintiff and Ex-officio Chairman of 2nd plaintiff and his coming on record is only a cake walk irrespective of the bar of limitation and also the procedure contemplated under CPC.

3. It is further submitted that the very petition and the language in which the affidavit is couched, are in an authoritarian and high-handed manner of the petitioner/proposed 7th plaintiff. It is misnomer that there will be no abatement in respect of institution, as CPC applies to animate and inanimate objects in one and the same way. In the absence of appropriate petition to condone the delay to set aside the abatement, the legal representative application under Order XXII Rule 1 of CPC is not

at all maintainable. However, the trial Court has ignored the aforesaid facts and allowed the I.A. filed by the 7th plaintiff.

4. Learned counsel appearing on behalf of respondents has contended that the aforementioned suit was filed by making averments that the petitioners/defendants 1 to 3, being local persons, with the help of anti-social elements, began causing obstructions to the 3rd plaintiff in discharging his duties as Managing Trustee. The 1st defendant filed a petition before the District Collector, Guntur stating that 3rd plaintiff was elected as Managing Trustee, but he put his signatures on the resolution due to pressure and the 1st defendant vaguely stated that 2nd defendant was arranged to be Managing Trustee without mentioning any date. Then 3rd plaintiff also filed petition before District Collector that he was duly elected as Managing Trustee and his election as Managing Trustee was valid. At the instance of both the parties, the District Collector agreed to resolve the dispute as mediator in the interest of the Trust. Initially, he appointed the RDO, Tenali to enquire into the matter and submit a report. The RDO submitted the report vide Proceedings No.2239/2008, November, 2008. For further clarification, the District Collector

appointed the District Co-operative Officer to enquire and submit a report. After enquiry, the District Co-operative Officer submitted a report. On the basis of the said report, the District Collector, vide his proceedings in R.C.No.4638/2008/R, dated 05.01.2009, held that plaintiffs 3 to 6 and 1st defendant are the valid trustees of the 1st plaintiff, and defendants 2 to 5, specifically defendants 2 and 3, are not trustees of the 1st plaintiff.

5. The fact remains that the 3rd plaintiff was obstructed from discharging his duties as Managing Trustee and it is not in dispute that the 3rd plaintiff had expired on 01.06.2014. Thus, the suit already abated against the said plaintiff.

6. Further, the proposed 7th plaintiff prays for his impleadment on the ground that after the death of his father, he was elected as Managing Trustee, therefore, to get adjudicate the suit, it is necessary to implead him in the suit in the place of his father and also sought to amend the plaint.

7. It is pertinent to note that the prayer in the suit is to declare that 3rd plaintiff is the Managing Trustee of the 1st plaintiff and Ex-officio Chairman of 2nd plaintiff and for consequential

permanent injunction restraining defendants 1 to 5, their men and associates or followers from in any way interfering with plaintiffs 3 to 6 in discharging their duties as Trustees and 3rd plaintiff discharging his duties as Managing Trustee and Ex-officio Chairman of the 2nd plaintiff.

8. Even if the proposed 7th plaintiff, who is son of the 3rd plaintiff who passed away on 01.06.2014, is appointed as Managing Trustee, the same was not because of his right being legal heir. He was elected in his independent capacity. If the petitioners/defendants are creating problem in discharging his duties also, he ought to have filed a separate suit instead of filing I.A. to get impleadment in the suit O.S.No.171 of 2009.

9. In view of the facts recorded above, I hereby set aside the order dated 23rd September 2017 passed in I.A.No.1283 of 2016 in O.S.No.171 of 2009.

10. However, liberty is granted to the proposed 7th plaintiff to file independent suit, if so advised.

11. Revision petition is accordingly allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

9th March 2018
ajr

