

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2019

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THE HONOURABLE **MR. JUSTICE C.SARAVANAN**

C.R.P.(PD).No.2970 of 2015
and
M.P.No.1 of 2015

Govindasamy ... Petitioner

Vs.

Parvathi (died)

G.Sureshbabu ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 25.09.2014 made in I.A.No.675 of 2014 in O.S.No.405 of 2010 on the file of the learned Principal District Munsif Court, Erode.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Lakshmi Narayanan

ORDER

The petitioner is aggrieved by the impugned order dated 25.09.2014 passed by the Principal District Munsif in I.A.No.675 of 2014 in O.S.No.405 of 2010.

2.By the impugned order, the Court has allowed the application filed by the respondent under Section 5 of the Limitation Act to condone the delay of 362 days in filing the application to set aside the abatement of suit after the original plaintiff Parvathi died.

3.By the impugned order, the trial Court has recorded that the delay in filing the application to bring on record the legal representatives of the deceased plaintiff has to be considered leniently, especially when the proposed party is not a direct legal heir.

4.While recording the same in paragraph No.7 of the impugned order, the court has also observed that the respondent (petitioner herein) has not raised serious contentions but has stated the Will dated 24.04.1986 was fraudulent. Therefore, the issue as to whether the Will in favour of the deceased plaintiff Parvathi was invalid or not will be decided only at the time of trial.

5.The learned counsel for the petitioner submitted that the order passed by the learned Principal District Musif was contrary to law settled by the Hon'ble Supreme Court in **Karedla**

Parthasaradhi vs Gangula Ramannamma (D) through L.Rs and Others, 2015(1) CTC 114 wherein it has been held as under:-

26. This Court in *Jaladi Suguna vs Satya Sai Central Trust* [*Jaladi Suguna v. Satya Sai Central Trust*, (2008) 8 SCC 521] had the occasion to interpret Order 22 Rules 4 and 5 CPC, R.V. Raveendran, J., speaking for the Bench after examining the object underlying in Order 22 Rules 4 and 5, held as under: (SCC pp. 526-27, paras 15-16)

"15. Filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, can it be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject-matter of the suit, vis-à-vis other rival claimants to the estate of the deceased.

16. The provisions of Order 22 Rules 4 and 5 are mandatory. When a respondent in an appeal dies, the court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the court. The Code also provides that where one of the respondents dies and the right to sue does not survive against the surviving respondents, the court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 makes it clear that the appeal can be heard only after the legal representatives are brought on record."

6. Applying the ratio, in the case of **Karedla Parthasaradhi vs Gangula Ramannamma (D) through L.Rs and Others**, 2015(1) CTC 114, this Court in **Rengasamy vs Rugmini and Others** 2006 (5) CTC 332, it was held as follows:-

14.Therefore in order to establish the claim based on the Will, the revision petitioner herein has to prove the execution of the will as contemplate under Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act.

7.The learned counsel further submits that without determining as to whether the respondent was a legal representative of the deceased plaintiff or not the application ought not to have been allowed.

8.I have considered the arguments advanced on behalf of the petitioner and the respondent.

9.Only delay has been condoned by the trial Court. Therefore, I do not find any merits in the present Civil Revision Petition. The Court shall therefore conduct an enquiry as to whether the respondent was entitled to represent the estate of the deceased plaintiff in the suit in terms of Order 22 Rule 5 of CPC, which reads as under:-

“Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate

C.SARAVANAN, J.,

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Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question."

10.The learned Principal District Munsif, Erode is therefore directed to dispose the application under Order 22 Rule 5 of CPC. The Court shall complete the exercise within a period of three months from the date of receipt of a copy of this order.

11.The present Civil Revision Petition stands partly allowed. No cost. Consequently, connected Miscellaneous petition is closed.

18.07.2019

Index : Yes/No
Internet : Yes/No

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To

1.The Principal District Munsif, Erode.

2.The Section Officer,
V.R.Section, High Court, Madras.

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