

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.571 of 2018

ORDER:

1. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.27.11.2017 in I.A.No.67 of 2017 in O.S.No.647 of 2015 of XIII Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar.

2. The said suit was filed by respondents 1 to 8 against the 9th respondent to declare themselves as legal heirs of deceased-Protected Tenant by name Kontham Shivaiah @ Kontham Shiva Reddy, alleging that they succeeded to his estate, which is the suit schedule property consisting of Acs.2.00 gts in Survey No.109 to 116 in Yamnampet Village, Ghatkesar Mandal, Ranga Reddy District.

3. They contended in the suit that the original Protected Tenant died; that they are his legal heirs and entitled to succeed to his estate; but due to oversight and innocence they have not applied for succession all these days. They alleged that when they filed application before the Tahsildar, Ghatkesar Mandal(9th respondent) for grant of Succession under Section 40 A.P.(TA) Tenancy & Agricultural Lands Act, 1950, he rejected the same through a Memo dt.28.11.2014 advising them to approach the Civil Court and so they filed the said suit.

4. Petitioner herein filed I.A.No.67 of 2017 to implead himself as 2nd defendant in the suit contending that the original Protected

Tenant along with his sons, during his life time has executed a private unregistered deed in his favour since he was the son of the daughter of the protected tenant, who was a sister of 1st respondent; that after the death of his parents, he was brought-up by his maternal uncle from 1968 and enjoyed the suit schedule property, but respondents 1 to 8 have suppressed these facts and filed the suit.

5. Counter affidavit was filed by respondents 1 to 8 opposing impleadment of the petitioner stating that the petitioner had no right in the property of the deceased-Protected Tenant. They alleged that the mother of the petitioner died long back and so the petitioner or anyone claiming through petitioner's mother will not be legal heirs of the deceased-Protected Tenant. They also denied the execution of private unregistered deed in favour of the petitioner by the original protected tenant. They contended that the said document is a fabricated document. They even denied that he was related to the deceased-Protected Tenant.

6. By order dt.27.11.2017, the Court below dismissed the said application. It held that legal heirs are only wife, husband and their children but daughter's son cannot be a legal heir of the head of the family and so he is not a necessary or proper party to the suit. It observed that if the petitioner had any right, he can file individual suit claiming right over the suit schedule property.

7. Assailing the same, this Revision is filed.

8. Counsel for the petitioner contended that the view taken by the Court below that daughter's son is not a legal heir of the head of the family is not correct, that the purpose of the impleadment of the petitioner is to avoid multiplicity of litigations relating to adjudication as to the legal heirs of the deceased-Protected Tenant, and so the order passed by the Court below deserves to be set aside. He also relied on a decision of the Supreme Court in ***Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya(deceased) through legal representatives and Others***¹.

9. Counsel for the respondents 1 to 8 refuted the said contentions and supported the order passed by the Court below. He also placed reliance on a judgment of this Court in ***G.Kaushik and another v. K.Yellaiah and others***²

10. I have noted the contentions of both sides.

11. In the instant case, petitioner seeks to get impleaded in the suit claiming that he is the grand son of the Protected Tenant through his daughter.

12. Admittedly, protected tenancy is individual in nature and the succession to a protected tenancy would be governed by the provisions of the Hindu Succession Act, 1956(for short 'the act'). Since it is nobody's case that there is a Will executed by the Protected Tenant, petitioner's mother, being the daughter of the

¹ 2017(9) Supreme Court Cases 700

² Order dt.22.06.2015 in CRP.No.s 1208, 1209 and 1210 of 2009

deceased-Protected Tenant, would also be a Class-I Heir under Section 8 of the said Act, and would inherit the same equally with the widow and male progeny of the protected tenant, and since she is not alive, petitioner would step into her shoes as her legal heir. Therefore, the view of the Court below that the petitioner would not be a legal heir of the protected tenant is not supported by the law.

13. In **Pankajbhai Rameshbhai Zalavadiya's** case(1 supra), the Supreme Court held that Order 1 Rule 10 of CPC enables the Court to add any person as a party at any stage of the proceedings, if the presence of the said person in the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. It also observed that avoidance of multiplicity of proceedings is also one of the objectives of the said provision.

14. Applying the said principle to the instant case, it cannot be held that the petitioner is not a necessary party to the suit, because if the petitioner is driven to institute a separate suit to establish that he is also a legal heir of the deceased-Protected Tenant, then it would cause multiplicity of litigations, which is to be avoided.

15. In **G.Kaushik's** case (2 supra) relied upon by the counsel for the respondent, third parties wanted to get impleaded in a suit for perpetual injunction filed by the plaintiff against 2nd

respondent, and this Court held that the relief in a suit for perpetual injunction is a relief in *personam* and would not apply to third parties other than the defendants in the suit, and the plaintiff being the *dominis litis* cannot be compelled to litigate against such third parties.

16. Unlike in the said case, the relief in the instant case is for declaration of legal status of the petitioner, who also claims to be legal heir of the deceased-protected tenant which the respondents 1 to 8 also want to claim. The instant suit is thus not a suit for mere injunction. Therefore, the said decision has no application.

17. Accordingly, this Civil Revision Petition is allowed; and the order dt.27.11.2017 in I.A.No.67 of 2017 in O.S.No.647 of 2015 of the XIII Additional District & Sessions Judge, Ranga Reddy District, L.B.Nagar is set aside, and the said I.A. is allowed. No order as to costs.

18. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

25th July, 2019.
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