

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

CIVIL REVISION PETITION No. 582 and 640 of 2017

COMMON ORDER:

Both these Revisions arise out of the same suit and between same parties, and so they are being disposed of by this common order.

2. These revisions are filed challenging the order dt.22.12.2016 in IA.Nos.2180 of 2016 and 1881 of 2016, respectively in OS.No.704 of 2006.

3. The petitioners are defendants 6 to 8 in the suit. They are the legal heirs of 4th defendant one K.Gopal Reddy.

4. The suit had been filed for specific performance of an agreement of sale dt.24-09-2003 by the 1st respondent/plaintiff on 23-10-2006 mentioning the cause of action for filing the suit as having arisen on 31-01-2005.

5. The 4th defendant had been impleaded in the suit itself. But, prior to the filing of the suit itself he died on 31-05-2005. After summons was sent in the suit, it became known that the 4th defendant died.

6. Therefore, IA.No.946 of 2008 was filed on 04-01-2007 to implead the 1st petitioner herein as his legal representative contending that she was the only legal heir.

7. As informed by the counsel for other respondents, the said IA.No.946 of 2008 was initially dismissed by the Court below, but the same was later allowed in CRP.No.4479 of 2013. In the said Judgment

reference was made to the Judgment in **Rasetty Rajyalakshamma and others v. Rajamuru Kannaiah** ¹ wherein it was held that the application to bring the legal representatives of a deceased-defendant, if filed within the period of limitation, can be ordered.

8. Much later, on coming to know that the petitioners 2 and 3 are the children of the deceased-4th defendant, through the written statement filed by the 1st petitioner, the 1st respondent filed IA.No.1881 of 2016 to implead them also as legal representatives of the deceased 4th defendant. The said application was opposed by the petitioners. The 1st respondent also filed IA.No.2180 of 2016, to set aside the abatement order dt.25.07.2016.

9. By separate orders dt.21-12-2016, the Court below allowed both the applications.

10. The Court below observed that omission to implead the petitioners 2 and 3 who are the daughters of the 1st petitioner and the deceased 4th defendant, was on account of lack of knowledge and was a bonafide mistake.

11. In IA.No.2180 of 2016, the Court below held that the abatement was liable to be set aside because CRP.No.4479 of 2013 had been allowed by giving a finding that non-impleadment of the legal representatives of the deceased 4th defendant, was a bonafide mistake.

12. Challenging the said orders, both these Revisions are filed.

¹ AIR 1978 AP 279

13. The contention of the counsel for the petitioners is that orders passed in IA.No.1881 of 2016 and 2180 of 2016 required to be set aside because, the application to implead the 1st petitioner had been filed beyond the period of 120 days fixed under Article 120 of the Limitation Act, 1963; therefore, the suit itself had abated; and the abatement cannot be set aside and petitioners 2 and 3 cannot be impleaded in IA.No.1881 of 2016.

14. Counsel for respondents refuted the said contentions and placed reliance on the Judgment in **Rasetty Rajyalakshamma's case** (1 supra) and also the Judgment in *Khaja Begum v. Gulam Mohiuddin* ² wherein it was held that if an application to bring legal representatives of the deceased-defendant, who was dead even by the date of institution of the suit, was filed before the expiry of period of limitation for the suit, it can be entertained and ordered. He contended that the application to implead the 1st petitioner in IA.No.946 of 2008 was filed on 04.01.2007 within three years from the date of cause of action accruing to the 1st respondent on 31.01.2005; and once the said application is ordered, the abatement is deemed to be set aside and petitioners 2 and 3 are also to be impleaded.

15. I find force in the contention of the counsel for the 1st respondent. The Judgment in *Khaja Begum's case* (2 supra) specifically states that a suit filed against the sole defendant, who was dead even before the date of institution of the suit, is not *void ab initio*, and can be continued against

² AIR 1976 AP 65

the legal representatives of the deceased-defendant if their substitution was made within the period of limitation for the suit.

16. In the instant case once the 1st petitioner was impleaded pursuant to the order in CRP.No.4479 of 2013, and so the abatement is deemed to have been set aside, and the petitioners 2 and 3 can certainly be impleaded subsequently as was done in IA.No.1881 of 2016.

17. I therefore, did not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

18. Accordingly, the Revisions fail and are dismissed. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

25th April, 2019
tk.