

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

CIVIL REVISION PETITION NO.6497 OF 2018

ORDER:

This Revision is filed under Section 115 CPC, challenging the order, dt.01.10.2018 in I.A.No.635 of 2017 in A.S.No.157 of 2014 on the file of the XIII Additional District and Sessions Judge, at L.B. Nagar, Ranga Reddy District.

2. One C.Uma Maheswara Sarma, filed O.S.No.41 of 2010 before the Principal Junior Civil Judge, Ranga Reddy District, against the respondents seeking their eviction, recovery of rental arrears and damages in respect of the suit schedule property.

3. The said suit was decreed on 19.06.2014.

4. The judgment in the suit was challenged in A.S.No.157 of 2014 by the respondents before the XIII Additional District and Sessions Judge, at L.B. Nagar, Ranga Reddy District.

5. Pending appeal, the sole respondent in the appeal namely C.Uma Maheswara Sarma died on 20.05.2017.

6. The petitioner then filed I.A.No.635 of 2017 under Order XXII Rule 2 CPC to implead him as legal heir of the deceased-plaintiff in the suit.

7. In the affidavit filed in support of the application, he contended that he is the sole legal heir of the deceased, that he has right to continue the proceedings and he should be allowed to continue the appeal as legal heir of the deceased-plaintiff. Along with the said application, copy of death certificate of the deceased sole respondent in the

appeal, registered copy of will and testament deed dt.07.08.2013 executed by the deceased respondent in the appeal as well as adoption deed (registered copy), dt.17.03.1998 and other documents were filed.

8. Counter-affidavit was filed by the respondent opposing the application.

9. It is contended that the petitioner claims to be the adopted son of the deceased-plaintiff in the appeal, that the age of the petitioner and that of the deceased respondent in the appeal were not disclosed and the adoption is illegal. It is also contended that during life time of the deceased, he never informed about the adoption to the respondents in the Revision. It is also contended that the original adoption deed and the original Will of the deceased apart from Succession Certificate were not produced; decree of adoption through Court of law is also not submitted; and the application should be dismissed.

10. By order, dt.01.10.2018, the Court below dismissed the application. It observed that nowhere did the petitioner mention, (a) that he is the original son or adopted son of the deceased-plaintiff and (b) had he acquired the property of the deceased-plaintiff i.e., by way of any succession or through will deed. It held that without mentioning these details, the petitioner cannot be treated as legal heir of the deceased-plaintiff. It also observed that the petitioner did not discharge the burden to show that he has relationship with the deceased-plaintiff.

11. None appears for the respondents though notice is served on the 1st respondent. Notice sent to the 2nd

respondent is returned with an endorsement not claimed. Therefore, both the respondents are deemed to be served.

12. Learned counsel for the petitioner contended that when the petitioner has filed death certificate, registered copy of will as well as registered copy of adoption deed, without advertng to these documents, the Court below has dismissed the application. He also contended that even if the elaborate pleadings are not filed about the adoption in I.A.No.635 of 2017, since the supporting material filed by the petitioner corroborates it, the Court below should have conducted an enquiry instead of summarily dismissing the application on the ground of absence of proper pleadings.

13. In I.A.No.635 of 2017, the petitioner did plead that he is the sole legal heir of the deceased-plaintiff and he had a right to continue the proceedings as a legal heir.

14. The petitioner has made the claim that he is an adopted son, and had filed certain documents too. Without advertng to any of the documents merely on hyper technical view that adoption is not specifically mentioned, the Court below is not right in dismissing the application. Therefore, the order passed by the Court below is liable to be set aside.

15. Accordingly, the Civil Revision Petition is allowed. The order, dt.01.10.2018 in I.A.No.635 of 2017 in A.S.No.157 of 2014 on the file of the XIII Additional District and Sessions Judge, at L.B. Nagar, Ranga Reddy District, is set aside; and the said I.A.No.635 of 2017 is remanded back to the said Court to be considered afresh by giving opportunity to the petitioner to file a proper affidavit giving more particulars and also to file the documents in support of his claim that he is the adopted son. The Court below shall

then decide the same after hearing both sides and after conducting enquiry under Order XXII Rule 5 CPC and shall pass a fresh order in the said I.A.No.635 of 2017 within six (6) weeks. No order as to costs. Miscellaneous petitions, if any pending in this Revision shall stand closed.

M.S.RAMACHANDRA RAO, J

DATED: 09-08-2019

Hsd

