

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

CRP.No.s 6730, 6731, 6834, 6841, 6847 and 7430 of 2018

COMMON ORDER:

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

2. Respondents 2 to 4 filed a suit O.S.No.487 of 1995 on the file of the VIII Additional Senior Civil Judge, Ranga Reddy District for partition against the 1st respondent and respondents 5 to 35.

3. A preliminary decree of partition was passed on 29.10.2010.

4. Thereafter, the defendants in the suit filed I.A.No.s 378 and 379 of 2016 for appointment of Advocate-Commissioner and for passing of a final decree.

5. The plaintiffs/respondents 2 to 4 filed I.A.No.s 474 and 475 of 2017 for appointment of Advocate-Commissioner and to pass a final decree.

6. The petitioners, who are third parties to the suit, filed I.A.No.s 48, 49, 50 and 51 of 2018 under Order 1 Rule 10 CPC to implead them in I.A.No.s 378 and 379 of 2016 and also in I.A.No.474 and 475 of 2017 on 28.12.2017. They also filed a list of documents on that day which includes the original of a General Power of Attorney(GPA) executed by them in favour of one Syed Mohammad Ali Akbar in respect of this litigation.

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7. After filing of the said impleadment petitions, they also filed I.A.No.s 732 and 733 of 2018 in I.A.No.s 49 and 48 of 2018, respectively, to permit the GPA to represent them in the case.

8. By two separate orders dt.28.08.2018, the Court below dismissed I.A.No.732 of 2018 in I.A.No.49 of 2018 in I.A.No.379 of 2018 and I.A.No.733 of 2018 in I.A.No.48 of 2018 in I.A.No.378 of 2018.

9. The following is the reasoning given by the Court below:

“The court perused the petitions and found that one sentence is not matching with the other in the affidavit. The petitioner claims himself to be GPA of proposed defendants. When the defendants as alleged by the petitioner are not added in the suit, where is the question of permitting the petitioner to act on behalf of proposed defendants. Further, there is no GPA filed by the petitioner except a Xerox copy and moreover, these petitions appear to have filed in I.A.49/18 in I.A.379/16 in O.S.487/1995. No whisper in the petition for not filing the original GPA and moreover, the affidavit shows that it is filed for proposed defendants which means future defendants. The Court would not like to entertain such vague petitions. Moreover, merely filing Rule 32 CRP is not sufficient unless it is accompanied Rule 33 CRP also. Accordingly, petitions are dismissed.”

10. Assailing these orders, CRP.No.s 6730 of 2018 and 6731 of 2018 have been filed by the petitioners.

11. Counsel for the petitioners in the said Revisions contends that the finding of the Court below that no GPA is filed by them except a

xerox copy, is factually incorrect, and pointed out that in I.A.No.51 of 2018 filed in the suit which they had filed on 28.12.2017, the original of the GPA is filed along with the list of documents, which the Court below did not notice.

12. To verify these allegations of the petitioners, record of the Court below was summoned and it indicates that the original of the GPA was filed by the petitioners on 28.12.2017 in the suit but the petitioners seem to have omitted to mention this fact in the affidavit filed by them in I.A.No.s 732 and 733 of 2018.

13. Therefore, the finding of the Court below that there was no GPA filed by the petitioners is factually incorrect because it was already filed in the suit much before these I.A.s were filed on 07.08.2018, but the Court below did not notice it.

14. The further finding of the Court below that one sentence in the affidavit is not matching with the other, is also not correct, because there is no such mismatch in the affidavit.

15. Its further finding that the respondents have raised a plea that the petitioners are not added in the suit and therefore the question of permitting the GPA holder to act on behalf of the petitioners is also not proper because the implead applications were decided on 06.09.2018 after the orders were passed in I.A.Nos.732 and 733 of 2018 on 28.08.2018.

16. The Court below ought to have dealt with all the applications I.A.Nos.48, 49, 50 and 51 of 2018 and I.A.Nos.732 and 733 of 2018 together instead of deciding them separately on different dates and that was why the error in the order of the court below occurred.

17. In this view of the matter, I am of the opinion that the orders passed by the Court below on 28.08.2018 in I.A.No.s 732 and 733 of 2018 cannot be sustained.

18. Accordingly, the CRP.Nos.6730 and 6731 are allowed; the order dt.28.08.2018 in I.A.No.s 732 and 733 of 2018 are set aside, and the said I.A.s are allowed. No order as to costs

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19. Petitioners filed applications I.A.No.s 48, 49, 50 and 51 of 2018 to implead them as respondents in I.A.No.s 379 and 378 of 2016 and 474 and 475 of 2017.

20. According to the petitioners, they are legal heirs of the 1st defendant in the suit and also the legal heirs of the 2nd defendant. They contended that the 1st petitioner deliberately did not implead them since they are residing in the United States of America(USA), and that they are therefore necessary and proper parties to the I.A.s and to the suit.

21. Counter affidavits were filed by the 1st respondent opposing these applications and taking a plea that petitioners are not legal

heirs and successors of the deceased-1st defendant and so they are not necessary and proper parties to these proceedings.

22. By separate orders passed on 06.09.2018, the Court below dismissed these applications. It relied on the order passed by it on 28.08.2018 in dismissing I.A.No.s 732 and 733 of 2018 to hold that once the GPA Holder is not permitted to represent the petitioners, these applications filed through the GPA Holder are not maintainable and are liable to be dismissed.

23. These orders cannot be sustained since I have already held in CRP.Nos.6730 and 6731 of 2018 that the orders passed on 28.08.2018 in I.A.No.s 732 and 733 of 2018 have to be set aside and set them aside by allowing those CRPs.

24. The Court below went on giving other reasons to reject the applications by going into the question, whether the petitioners are in fact the legal heirs of 1st defendant.

25. According to me, this exercise ought to be done by the Court below after allowing the petitioners to come on record and then giving them an opportunity to prove by oral or documentary evidence that they are legal heirs of the deceased-1st defendant and in the applications to implead the petitioners, that issue cannot be decided.

26. Therefore, the findings recorded by the Court below regarding the relationship of the petitioner with the deceased-1st defendant are set aside.

27. Accordingly, CRP.No.s 6834, 6841, 6847 and 7430 of 2018 are allowed; orders dt.06.09.2018 in I.A.No.s 48, 49, 50 and 51 of 2018 are set aside; and the said I.A.s are allowed and the petitioners are impleaded as parties in I.A.No.s 378 and 379 of 2016 and 474 and 475 of 2017. The Court below shall permit both parties to lead evidence on the aspect '*whether the petitioners are legal heirs of the deceased-1st defendant*', and after they adduced evidence, the Court below shall decide what relief they are entitled to in the final decree petitioners, which are pending before it.

28. Office is directed to re-transmit the suit record to the Court below. Since the suit is of the year 1995, the Court below shall expeditiously complete all the proceedings pending in the suit, preferably within a period of six (06) months from the date of receipt of a copy of this order. Both parties assure that they would cooperate with the Court below in this regard. No order as to costs.

29. Consequently, miscellaneous petitions pending if any, in all the Revisions, shall stand closed.

M.S. RAMACHANDRA RAO, J

18th July, 2019.
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