

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION Nos.2073 and 2131 of 2019

COMMON ORDER:

C.R.P.No.2073 of 2019 assails the docket order dated 08.07.2019 in I.A.No.204 of 2018 in O.S.No.105 of 2007; and C.R.P.No.2131 of 2019 assails the docket order of the same date in I.A.No.267 of 2018 in the same suit.

Heard learned counsel for the petitioners, and learned counsel for the respondent.

It is not necessary for this Court to enter into merits of the matter, except to state that it is unfortunate that the learned Senior Civil Judge has passed a laconic order.

Learned counsel for the petitioners placed reliance on the judgment of the Hon' ble Supreme Court in **Mahanth Satyanand alias Ramjee Singh v. Shyam Lal Chauhan**¹, wherein it was held as under:

"8. The procedural aspect to be followed when an application is filed under Order 22 Rule 5 CPC is no longer res integra as this Court in Jaladi Suguna v. Satya Sai Central Trust [(2008) 8 SCC 521] has interpreted Order 22 Rule 5 CPC in the following terms : (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

¹ (2018) 18 Supreme Court Cases 485

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...

16. The provisions of Rules 4 and 5 of Order 22 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....

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.” (emphasis supplied)

9. Perceiving the present case in the above framework, the High Court, after noticing that two individual applicants have claimed to be the chelas of the deceased mahanth and were contending to be his legal representatives, has rightly by an order dated 2-7-2008 [2008 SCC OnLine Pat 1559] referred the matter to the Subordinate Judge, Bhabhua for determination under Order 22 Rule 5 CPC. Accordingly, the trial court decided the question and sent back the matter with its report dated 4-12-2008. Before the High Court, the rival contender has filed an objection and in response to the same, the other applicant has filed his counter-affidavit. Thereafter, the High Court, instead of deciding on merits the question of legal representative of the deceased out of the two contenders, has simply substituted both the contenders in the place of the deceased appellant before it.

10. Apparently, the issue of bringing on record the legal representative in a pending appeal has to be dealt with in a manner prescribed under the provisions of Order 22 Rule 5. From the context of the settled legal position, it is clear that when a question arises before the court in a pending matter as to who will come on record as the legal heir of the deceased, the court shall, before proceeding to decide with the substantive issues involved in the case, first and foremost, shall decide who is the legal representative of the deceased. It is also well settled that when a party dies at the stage of second appeal and there are rival contenders claiming to be the legal representatives of the deceased, as in

the present case, there is a burden cast upon the court to first decide as to who is the legal representative of the deceased. Without doing so, the court cannot make all the contenders as parties. The aspect of deciding legal representative cannot also be postponed with a view to decide the same at the time of final disposal of the appeal on merits. It is significant that the statute has clearly mandated that if the question of deciding the legal representative of a legatee arises before an appellate court, it may direct the subordinate court to make enquiries by leading evidence, if any, through the process of trial and record its finding as to who is the legal representative. After considering the finding recorded by the trial court, the appellate court can decide and bring on record the legal representative of the deceased.

It is well settled that an order to be made under Order 22 Rule 5 CPC has to be a reasoned order, and the declaration of legal heir cannot be made in a casual manner.

In those circumstances, the civil revision petitions are allowed, by setting aside the order dated 08.07.2019 passed in I.A.Nos.204 and 267 of 2018; and the matters are remitted back to the learned Senior Civil Judge, for considering I.A.Nos.204 and 267 of 2018 afresh and passing orders in accordance with law. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

20th February, 2020

KSM

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