

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5329 of 2015

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the plaintiffs is directed against the orders dated 09.10.2015 of the learned II Additional Junior Civil Judge, Ranga Reddy District passed in IA.no.242 of 2015 in OS.no.241 of 2009 filed by 3rd parties/respondents 1 to 3 herein under Order I Rule 10 of the Code of Civil Procedure, 1908 ('the Code', for short) requesting to grant them permission to be impleaded as defendants 5 to 7 in the suit filed by the plaintiffs for declaration that the decree and judgment in OS.no.31 of 1979 on the file of the Court of the learned Munsif Magistrate, Hyderabad, East & North, Hyderabad District are null and void and not binding on the plaintiffs.

2. I have heard the submissions of the learned counsel for the revision petitioners/plaintiffs ('the plaintiffs', for brevity) and the learned counsel for the respondents 1 to 3/impleaded defendants 5 to 7. The respondents 4 to 6/defendants 1 to 4 originally impleaded in the suit are stated to be not necessary parties. I have perused the material record.

3. The facts necessary to be stated as a prelude to this revision, in brief, are as follows:

The plaintiffs brought the aforesaid suit against the defendants 1 to 4 seeking the aforementioned relief. It is stated at the hearing that some of the defendants are resisting the suit. On the death of the 1st defendant on 05.06.2013, the plaintiffs had filed three applications viz., IA.no.658 of 2013 for setting aside abatement; IA.no.88 of 2013 for condonation of delay in bringing the legal representatives of the

deceased 1st defendant on record; and IA.no.688 of 2013 for permitting the plaintiffs to implead the proposed defendants 5 to 7 as defendants in the said suit. IA.no.88 of 2013 and IA.no.658 of 2013 were allowed on 25.03.2014 and 10.03.2014 respectively. However, when the application (IA.no.688 of 2013) for impleadment of the legal representatives of the deceased 1st defendant was reserved for orders, the plaintiffs filed a petition to reopen the said petition and had not pressed the said petition. Therefore, the IA.no.688 of 2013 was dismissed by the trial Court as not pressed, however, giving liberty to the proposed defendants to file a petition for their impleadment. Subsequently, the present proposed defendants 5 to 7, filed the instant application in IA.no.242 of 2015 for their impleadment *inter alia* contending that they are the legal heirs of the deceased 1st defendant, being residuaries, and that in view of their relationship as Class-II legal heirs of the deceased 1st defendant, they are entitled to come on record as defendants 5 to 7. In support of the said request, the said proposed defendants had submitted that there are several litigations on the files of various Courts and that in all such cases, the proposed defendants have taken similar steps for their impleadment and that the plaintiffs having earlier filed applications for setting aside abatement and condonation of delay and also for impleadment of the present proposed defendants as legal representatives of the deceased 1st defendant have maliciously not pressed the LR petition after the earlier two applications were allowed and that in the facts and circumstances of the case and as per Shariyath law they are entitled to come on record as defendants 5 to 7 as the 1st proposed party is the real sister of the deceased 1st defendant and the proposed parties 2 and 3 are her nephews. The said application was resisted by the plaintiffs by filing a counter affidavit *inter alia* contending that the proposed defendants cannot place reliance on a Fathwa issued by Darul Ifta Jamia Nizamia to prove their entitlement to come on record

and that such Fatwas have no legal sanctity in view of the precedential guidance of the Supreme Court in **Vishwa Lochan Madan v. Union of India and others**^[1] and that the proposed defendants have no *locus standi* to file the application for their impleadment under Order I Rule 10 of the Code by placing reliance solely on the Fathwa. On merits, the trial Court allowed the application and permitted the proposed defendants to come on record. Aggrieved of the said orders, the plaintiffs are before this Court.

4. The learned counsel for the plaintiffs while reiterating the contentions urged before the Court below, which are stated supra, *inter alia* contended that the trial Court misconstrued the import of the ratio in the decision of the Supreme Court cited before it and that without the proposed defendants proving their relationship with the deceased 1st defendant, they cannot come on record.

5. On the other hand, the learned counsel for the proposed/impleaded defendants had contended that the working out shares of the sharers under the Muslim law is very complex and that, therefore, the parties generally take the assistance of the authorities like Darul Ifta Jamia Nizamia for ascertaining/determination of the shares of the parties in the properties, which are left behind by a deceased, and that such documents are only intended to aid the parties and assist the Court but, as rightly contended by the learned counsel for the plaintiffs, the said documents are not binding on the Court and that the plaintiffs on their own showing had filed an LR application to bring the proposed defendants as defendants 5 to 7 in the suit and that in the affidavit filed by the 3rd plaintiff in support of the said application, it is categorically stated that the proposed defendants are the legal heirs and successors of the deceased 1st defendant and as such the plaintiffs cannot oppose for the proposed defendants coming on record, as they have got right,

title and interest over the property involved in the *lis*.

6. I have bestowed my attention to the facts and given earnest consideration to the submissions. As already noted, the suit is filed for a declaration that the decree and judgment obtained in a suit of the year 1979 are null and void. The 1st defendant had died. Admittedly, the plaintiffs filed three applications for setting aside abatement, for condonation of delay in bringing on record the legal representatives of the deceased 1st defendant and for permission to implead the present proposed defendants as defendants 5 to 7, they being the legal representatives of the deceased 1st defendant. Though the applications for condonation of delay and setting aside abatement were allowed by the Court below, the petition for impleadment of the LRs filed by the plaintiffs was dismissed as not pressed, however, giving liberty to the proposed defendants to file an application for their impleadment as defendants to the suit. Further, there is a categorical assertion by the 3rd plaintiff in his affidavit filed in support of the application for impleadment of the proposed defendants as legal representatives of the 1st defendant to the effect that the proposed defendants are the legal heirs and successors of the deceased 1st defendant. That assertion *prima facie* is sufficient at this stage to establish the relationship of the proposed defendants with the deceased 1st defendant. Since a decree in a former suit is under challenge in the suit, there is no need to ascertain the rights or consider the merits of the claims of the proposed defendants 5 to 7 at this stage and it is for the trial Court to examine that question, if necessary, at an appropriate later stage. Coming to the decision of the Supreme Court, in the cited decision it is held that it is well settled that adjudication by a local authority sanctioned by law is enforceable and binding and meant to be obeyed unless upset by an authority provided by law itself and that the power to adjudicate must flow from a validly made law and a person deriving benefit from the

adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequences as provided in law are to ensue and that the decision of Dar-ul-Qaza or the Fatwa do not satisfy any of these requirements and that Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature and that, therefore, the opinion or the Fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority under a judicial system sanctioned by law. There is no dispute with the legal proposition. Suffice if it is stated that the issue whether the present proposed defendants would be entitled to any rights or share as mentioned in the Fatwa, if arises for consideration, will have to be decided by the Court below, independently of the Fatwa in view of the decision of the Supreme Court.

7. Viewed thus, this Court finds that there is no merit in the revision petition and that the order impugned does not warrant any interference.

8. In the result, the Civil Revision Petition is dismissed. Considering the fact that the suit is of the year 2009, the plaintiffs are directed to immediately carry out the amendments to the plaint and, if necessary, file an application for consequential amendments of the plaint within 15 days from the date of the receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this CRP shall stand closed.

M. SEETHARAMA MURTI, J

14.03.2016
Vjl

[\[1\]](#) (2014) 7 SCC 707