



HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE TWENTY SIXTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI
CIVIL REVISION PETITION NO: 86 OF 2022

Between:

1. Nadimipalle Ramachandra Reddy S/o Rami Reddy, aged about 54 years,
Occ. Cultivation, R/o Bandlavanka, Behind Degree College,
LBS Road, Piler, Chittoor District.

...PETITIONER(S)

AND:

1. Shaik Sattar Saheb S/o Khaja Miya, aged about 70 years, R/o Now R/o at
D.No.2-911-1, Model Colony,
Chittoor Road, Piler, Chittoor District.

...RESPONDENTS

Counsel for the Petitioner(s): P GANGA RAMI REDDY

Counsel for the Respondents:

The Court made the following: ORDER



THE HON'BLE MS JUSTICE B.S.BHANUMATHI

C.R.P. No.86 of 2022

ORDER :

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order dated 09-10-2020 dismissing I.A.No.25 of 2020 in O.S.No.85 of 2013 on the file of the Court of XI Additional District Judge, Piler filed under Order XXIII Rules 1 and 2, Section 151 CPC seeking permission for withdrawal of the suit with an opportunity to file fresh suit on future cause of action which may arise in connection with the suit schedule property.

2. The petitioner filed the suit for declaration of the possessory title of the plaintiff to the plaint schedule property i.e., Ac.01-73 cents out to Ac.05-73 cents in survey No.211 of Dodipalle village, Piler Mandal, Piler Sub District of Chittoor District and for consequential permanent injunction against the defendant, his men etc., from interfering with the peaceful possession and enjoyment of the plaint schedule property by the plaintiff and also for direction to the defendant to execute the registered sale deed in favour of the plaintiff and in case, if the defendant fails to execute the same, the Court to execute the same and costs.



3. Pending the suit, the sole defendant died on 09.01.2020 (according to the plaintiff), but no steps were taken to bring in the legal representatives of the deceased defendant. However, this petition in I.A.No.25 of 2020 was filed on 09.10.2020. It is pertinent to note that a counter signed by the counsel for the defendant was filed stating that the defendant died on 16.01.2020 pending the suit and it is incorrect to state that the defendant died on 09.01.2020. It is also further stated that the deceased left behind him, his 2nd wife Smt.P.Nagamma and the plaintiff is well aware of the same but suppressed it. It is further stated that the deceased who had exclusive right, title and possession over the suit schedule property executed his last will dated 17.04.2014 in a sound state of mind in favour of Smt.P.Nagamma and got it registered in the office of Sub Registrar, Piler vide document No.22 of 2014, Book III and its photostat copy was also included to the counter. Therefore, it is contended in the counter that Smt P.Nagamma is the sole legal heir of the defendant and continuing in possession and enjoyment of the same as absolute owner. Thus, the petition was resisted saying that the plaintiff cannot file this petition to withdraw the suit, but ought to have added the legal heir and the Court



cannot permit for such withdrawal of the suit with a permission to file a fresh suit against the dead person.

4. As per Order XXII Rule 10-A CPC, a duty is cast on the pleader to communicate the Court the death of a party. Since the contract between a party and a counsel would come to an end on the death of the party, there is no authority to represent a client and therefore, it is only by virtue of Order XXII Rule 10-A of CPC, a pleader has authority to communicate the same to the Court. Order XXII Rule 10-A CPC reads as follows:

“Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall there upon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.”

5. In view of the legal proposition, the authority of the counsel appearing for the defendant is limited only to communicate death of the party to the Court and nothing more. However, he filed a counter resisting the petition and the same was received by the Court and mentioned the same



in the order, however the contents have not been considered for the purpose of answering the point involved in the petition. Independently of the contents in the counter, the order has been passed by examining the relevant provisions under Order XXIII Rules 1 and 2 CPC mainly Rule 1.

6. Though the petitioner, by virtue of the counter, came to know that there is a registered will left by the deceased, has not taken any steps to bring the legatee as a legal representative, nor did the legatee come forward to file an application to implead herself in the suit. The petitioner stuck to his stand that he did not know who are legal representatives left by the deceased. The suit got abated by operation of law on the expiry of the period of limitation to bring legal representatives on record. However, on 09.10.2020, when I.A.No.25 of 2020 was disposed, the Court recorded that the suit got abated. Thus, the suit did not survive any more. Since I.A.No.25 of 2020 was also dismissed, the petitioner is remediless insofar as the prayer sought in the petition.

7. Having aggrieved by the impugned order, this revision petition is filed stating that the trial Court erred in dismissing the petition, since the petitioner having no other option filed the application filed under Order XXIII Rule 1 (1)



CPC to withdraw the suit reserving his right to file fresh suit, if any cause of action arise in future, under these circumstances stated in the petition.

8. While passing the order, the trial Court observed that since the petitioner admitted the death of the sole defendant in January, 2020, so far, neither any legal representative nor the Government under the doctrine of escheat contemplated under Section 29 of Hindu Succession Act, is made a party and thus, literally there is no respondent in the application and consequently the application shall be negated at the threshold.

9. As rightly observed by the trial Court, in the absence of respondent, no order can be invited against none, more particularly when the relief sought by the petitioner can be opposed by the defendant. Further the trial Court observed that the petitioner has not taken a specific stand that the suit would fail by reason of some normal defect, or that there are sufficient grounds for allowing him to institute fresh suit in respect of the full or part of the subject matter in respect of cause of action so far accrued, but contingent. In this regard, the contention of the learned counsel for the petitioner is that since no defendant is available, it is sufficient ground to allow him to institute a fresh suit. Since



in the present revision also no living respondent is made a party and on the other hand the respondent is shown as if alive and by virtue of the same and this Court previously directed issue of notice to the respondent, as can be seen from the docket orders. As there is no living respondent, it is not possible to pass any order in favour of the petitioner against any person. Therefore, the legal status of the petition herein and before the trial Court remain the same.

10. In fact, Order XXII Rule 4-A CPC prescribes a procedure where there is no legal representative. It says if, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on any application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit. The said rule contemplates the procedure to be followed



before making any such order. It requires the Court to issue notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit and shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.

11. The preceding Rule No.4 provides that where the sole defendant or sole surviving defendant dies and the right to sue survives, on an application made in that behalf Court shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. But where within the time limited by law, no application is made under this rule, the suit shall abate as against the deceased defendant. Order XXII Rule 9 CPC declares that where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action subject to other exceptions provided therein for bringing the legal representatives on record by getting the order of abatement or dismissal set aside on application filed within time or by condoning the delay by applying the provisions of Indian Limitation Act.



12. In the present case, since the legal representative(s) of the deceased defendant has/have not been brought on record within the time limited by law, no express order of abatement of the suit is required, since by operation of law, the suit gets abated. May be, by virtue of the pendency of I.A.No.25 of 2020, without recording the abatement of the suit, the proceedings were live and it was only when I.A.No.25 of 2020 was disposed of, the trial Court recorded the abatement of the suit.

13. Since Order XXII Rule 4-A CPC permits a Court, on application of any party to the suit, to proceed with the suit in the absence of person representing the estate of the deceased person or appoint an Administrator General or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit and can pass judgment binding on the estate of the deceased person, the petitioner could have taken appropriate step, but no such remedy has been availed by the petitioner/plaintiff.

14. For the reasons probably known to him, he has not even chosen to make Smt P.Nagamma also as a party inspite of having knowledge of the registered will in the name of such person.



15. Here also since the petitioner has not made any living person as respondent, no order on merits can be passed. The petitioner has to work out his remedies before the trial Court as per law.

16. With these observations, this Civil Revision Petition is disposed of.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE B.S.BHANUMATHI

Date : 26-06-2023

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Note : 1. The Registry is directed to incorporate that the respondent is 'dead' in the cause title of petition as well as the order.

2. L.R. Copy to be reported.

(B/o)
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THE HON'BLE MS JUSTICE B.S.BHANUMATHI

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Dt.26.06.2023

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