

O.S.NO.7782/2003
dated: 03-02-2016

ORDER ON I.A.NO.19

This application is filed u/O 22 R4(1) of CPC by the applicants to substitute the deceased defendant No.1. It is contested by the plaintiffs. Heard Sri RBS Advocate for the plaintiffs and Sri PMP Advocate for the applicants. Perused.

This is a suit for declaration and consequential relief of permanent injunction. Initially suit was filed against only one defendant later defendant No.2 to 4 were came to be added. During the pendency of the suit plaintiffs reported the death of defendant No.1 and filed memo stating that she has died without leaving any LRs. However through I.A.No.19 the applicants claiming themselves as legatees under the Will executed by said defendant No.1, propose to come on record. On receiving the objections my predecessor in office fixed the matter for enquiry on I.A.No.19. In this regard having gone through the ration laid down by the Hon'ble Apex Court, this court felt that both sides have to be heard on the matter of holding enquiry and disposing of this application sans enquiry, therefore they were heard.

During the argument Sri RBS advocate referring to the decision reported at (2008) 8 SCC 521 = AIR 2008 SC 2866 in the case of Jaladi Suguna dead through her LRs vs Sathya Sai Central Trust and others urged that court has to hold an enquiry

before it decides on the application in hand. On the other hand applicants submitted that since the Will dated 6.8.1998, on which they propose to come on record, was already referred to in the written statement of defendant No.1, no enquiry needs to be held in the matter. In this context having gone through the subsequent decision of the Hon'ble Apex Court reported at AIR 2010 SC 344 in the case of Suresh Kumar Bansal vs Krishna Bansal and another I find that there is some force in submission of applicants.

The point to be considered in the case in hand whether these applicants are the legatees under the Will said to have been executed by the defendant No.1 to which she has already pleaded in her written statement at para No.9. No doubt in Jaladi Sugana's case Hon'ble Court held that enquiry is to be made before allowing the alleged legatees to come on record, a distinction has to be drawn between the stage at which such an application would be filed. In the Jaladi Sugana's case when the Regular Appeal was pending before the Hon'ble High Court of A.P. sole plaintiff died and there was conflicting claim between her husband and the legatees of her Will. Facts of the case further show that inspite of receiving the enquiry findings from the trial court after remand for that limited purpose, while deciding the matter on its merits in the Regular Appeal, Hon'ble High Court gave its findings on the tenability of the two rival applications. Therefore Hon'ble Supreme Court held that the said course adopted by the Hon'ble High Court of A.P was

incorrect and by referring to proviso to order 22 R5 of CPC it held that enquiry is to be made and application has to be disposed thereafter only matter has to be heard on its merits. In the instant case admittedly still matter is in the trial court and more over as held in the subsequent decision of the Hon'ble Apex Court in Suresh Kumar Bansal's case, court can entertain the application of the legatees and give them an opportunity to prove the Will. The one more touching point in this case there is no rival claim against the applicants who have moved this application and apart from that, as mentioned supra the defendant No.1 herself as pleaded in her written statement about this Will. Wherefore holding that there is no necessity to have a separate enquiry on the IA in hand and plaintiffs can be permitted to dispute the genuinity of the Will to relied by the applicants at an appropriate stage, I proceed to make the following

ORDER

I.A.No.19 is allowed. Applicants are permitted to substitute deceased defendant No.1.

Plaintiffs shall carry out amendment and furnish amended plaint copy to the applicants who shall be brought on records as defendant No.1(a) to 1(f).

In the light of the law laid down in the decision reported at ILR 1999 Kar S.N.54 the defendant No.1(a) to (f), the LRs shall be stepping into the shoes of their predecessor namely

deceased defendant No.1 are not permitted to take any other additional defence. In terms of the above observations IA stands disposed off.

For amendment by 11-02-2016 & for cross of Pw1

III Addl.CC & SJ