



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3311]

**TUESDAY, THE TENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

I.A.No.1 of 2024

In

CIVIL REVISION PETITION NO: 2634/2023

Between:

Musunuri Satyanarayana

...PETITIONER

AND

Dr. Tummala Indira Devi and others

...RESPONDENT(S)

Counsel for the Petitioner:

Party-in-person

Counsel for the Respondent(S):

The Court made the following:

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

I.A.No.1 of 2024

In

C.R.P.No.2634 of 2023

ORDER:

In view of Order XXII rule 12 CPC, question arose in the present case, as to what happens to the proceedings for execution of a decree for permanent injunction under Order XXI, rule 32 CPC, when JDr dies pending the execution proceedings.

2. This application has been filed by the petitioner/party-in person seeking the following prayer:

“.....to pass order directing the registry to add the word “died” after the name of 4th respondent Gorijavolu Rajendra Prasad in the cause title of C.R.P.No.2634 of 2023 and to pass such other order or orders that are necessary in the interest of justice.”

3. It is stated in paragraph no.4 of the affidavit filed in support of the petition that the 4th respondent, namely, Gorijavolu Rajendra Prasad expired on 19.07.2024, and one of his legal representative, i.e., his wife, by name, Gorijavolu Pavani, is on record as the 5th respondent, that there is sufficient representation in the matter from the legal representative of the deceased 4th respondent and hence, there is no necessity of bringing all the legal representatives on record in the place

of the deceased 4th respondent, and that it is necessary to incorporate changes in the cause title of C.R.P.No.2634 of 2023, after the name of the 4th respondent as “died”.

4. Heard the petitioner/party-in-person.

5. Facts leading to filing of the petition are briefly as follows:

(a) The petitioner/DHr filed ATC No.2 of 2003 against the sole respondent (i) for declaration that the purchase of the schedule land of ac.3.93 cents and ac.3.47 cents in Sy.No.56/2; ac.0.10 cents in Sy.No.56/3; and ac.0.36 cents in Sy.No.65/5B), Mulukuduru village by the petitioner from the 1st respondent came into effect from the date of payment of the 1st installment of the determined value of the schedule land on 26.09.2023; and (ii) for injunction against alienations. In I.A. No. 1004/2003 filed in ATC No.2 of 2003, the Tribunal passed order of *status quo* against alienations.

(b) When the interlocutory order was in force, on 03.02.2006, the 1st respondent executed a sale deed in favour of the 2nd respondent in respect of ac.3.47 cents in Sy.No.56/2 and ac.0.10 cents in Sy.No.56/3 (total ac.3.57 cents) and other sale deed in favour of the 3rd respondent in respect of ac.0.36 cents in Sy.No.65/5B, in violation of the orders of

status quo, when the property was in possession and cultivation of the petitioner.

(c) The petitioner alleged that the 2nd respondent and his brother, in the intervening night of 05/06.02.2006, trespassed into the land under lease of the petitioner and stole paddy. The petitioner lodged a complaint.

(d) On the petition of the petitioner, the 2nd and 3rd respondents were added during the pendency of ATC No.02 of 2003.

(e) On 30.11.2009, the petition was allowed by the Tribunal in respect of right of pre-emption and granted permanent injunction not to interfere with the petitioner's possession. The petitioner paid the amount directed to be paid in the order.

(f) When the JDrs preferred appeal A.T.A.No.02 of 2010, there was no order of stay, the petitioner filed E.P.No.82 of 2010 under Order XXI, rule 32 CPC against the respondents No.2 to 5. It was dismissed on 29.11.2013 as the order of Tribunal was not in subsistence as on that date. Then, the respondents Nos.2, 4 and 5 made further damage to the land by removing southern boundary bund and raised level of the part of the land (equal to the level of the land of the 4th respondent) and thereby making it unfit for wet cultivation.

- (g) The petitioner failed before the District Court and the High Court.
- (h) On 27.10.2021, the Supreme Court, *vide* orders dated 27.10.2021 in SLPs No.28696 & 28697 of 2015, set aside the orders of the High Court in C.R.P.Nos.816 of 2011 and 3591 of 2001 and restored the order of the Tribunal.
- (i) The petitioner contends that he is entitled for immediate restitution of the possession of the land as the 2nd and the 3rd respondents retained the land in violation of the permanent injunction and so the contemnors are liable for legal action under CPC and the Contempt of Courts Act; besides liable for mesne profits.
- (j) As the respondents No.2, 4 and 5 are still continuing to disobey the final order, this execution petition in E.P.No.6 of 2022 was filed under Order XXI rule 32 and Sections 51 and 151 CPC against them, to send the respondents Nos.2 and 4 to civil prison and to compensate the petitioner by attaching and subsequently selling the following property of the respondents No.4 & 5 who are not parties to the proceedings in ATC No.02 of 2003, but allegedly, illegally occupied the disputed land along with the 2nd respondent and merged with their land. E.P schedule lands are ac.3.00 cents and ac.0.57 cents out of ac.9.14 cents in D.No.56.2 of Mulukudur village.

6. Counter of the 2nd respondent was filed and the same has been adopted by the respondents No.4 & 5.

7. It is mainly contended that the petitioner admitted that he was out of possession as on 20.12.2010, i.e., the date of order of the appellate Court in ATA No.02 of 2010 and that he was dispossessed on 05/06.02.2006 and therefore, the remedy is to file a separate suit and that the 4th and the 5th respondents are not parties to ATC No.02 of 2003 and without any proof or order against them, the decree cannot be executed against them. It is also contended that a review petition was filed before the Supreme Court and it is pending (as on the date of filing the counter on 05.05.2022).

8. As the execution Court, after conducting the enquiry by examining the petitioner as PW1 and the 2nd respondent as RW1 and receiving exhibits P1 and P2, dismissed the petition on 19.07.2013, this revision petition was filed.

9. Since the 4th respondent/4th JDr died pending the revision, the petitioner intends to record the death of the 4th respondent. To that extent, there is no controversy.

10. Further, he represents that since his wife who is the 5th respondent is on record, there is no requirement to bring the other legal representatives of the deceased 4th respondent.

11. Before proceeding further, it is apt to mention that Sections 50, 52, Order XXII, rules 3, 4 and 12 CPC deal with the provisions relating to death of a party in execution proceedings.

12. Section 52 is not relevant here as it deals with a situation when a decree is obtained against a legal representative.

13. Section 50, Order XXII, rules, 3, 4 and 12 read as under:

50. Legal representative:- (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.'

Order XXII, rule 3 CPC:

"Procedure in case of death of one of several plaintiffs or of sole plaintiff"

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative, of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

Order XXII, rule 4 CPC:

"Procedure in case of death of one of several defendants or of sole defendant"

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a part and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where --

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.

Order XXII, rule 12 CPC:

Application of Order to proceedings.—Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

14. The following decisions would help in understanding the scope of Order XXII, rule 12 CPC.

- (i) **Venkatachalam Chetti Vs. Ramaswami servai (dead) and others**¹
- (ii) **Arif Abdul Ghani and others Vs. Shaik Chand and others**²
- (iii) **V.Uthirapathi Vs. Ashrab Alia and others**³
- (iv) **Varadarajan Vs. Kanakavalli and others**⁴
- (v) **Sri Padmavathi Rice and Floor Mills Vs. Samudrala Venkateswara Rao and others**⁵

(i). In **Venkatachalam Chetti Vs. Ramaswami Servai (Dead) and Others** (1 supra), the High Court of Madras while dealing with the issue whether legal representative of a decree-holder who died during the pendency of an execution petition can be impleaded or should he file a fresh application held at paras 11, 23 & 39 that:

“11. If, as I have said, nothing in Rule 3 of Order 22 applies to execution proceedings, then the question whether the legal representative of a decree-holder can be substituted in the pending execution application and be allowed to proceed with that application or whether he should be compelled to file a fresh application should be considered in the light of the other provisions of the Code. If Rule 3 of Order 22 does not apply, it is argued that there is no

¹ AIR 1932 MADRAS 73, dt.18.09.1931

² 1998(2) APLJ 269 (HC), dt.09.04.1998

³ (1998) 3 SCC 148, dt.18.02.1998

⁴ (2020) 11 SCC 598, dt.22.01.2020

⁵ Manu/AP/0441/2007, dt.07.06.2007

procedure provided in the Code for bringing on record the legal representative of a deceased decree-holder in execution proceedings. It is true that there is no specific machinery in the Code for that purpose, but does it necessarily follow from this, that the Code prohibits the legal representative from making an application to continue the pending petition after substituting his name in it? I think not. If Rule 3 does not apply, then obviously there can be no objection for proceeding under Section 146 of the Code and Order 21, Rule 16. Under Section 146 there being no other procedure provided, a legal representative of a decree-holder may make an application which may be made by the decree-holder and under Order 21, Rule 16 where a decree is transferred by assignment or operation of law as happens in the case of the death of a decree-holder, the transferee may apply for the execution of the decree.' Cases have held that where a decree-holder dies or transfers his decree pending the execution application filed by him, then the transferee decree-holder including his heir is entitled under Order 21, Rule 16 to apply for continuing the pending execution application by substituting his name in it and that such an application is not to be considered as a fresh execution application.

23. In the light of all the above decisions, I would hold that the legal representative of a decree-holder who died during the pendency of an execution petition filed by him can be substituted in his place in the execution petition and be allowed to continue it.

39. Upon general principles of procedure, and apart from the specific provisions of the Code, there are two ways in which the legal representative of a deceased decree-holder may conceivably enforce the decree, either (a) by an original application to enforce it, or (b) by obtaining leave to continue an execution proceeding already begun by his predecessor.”

(ii). In **Arif Abdul Ghani and Others Vs. Shaik Chand and Others**, (2nd supra), the High Court of Andhra Pradesh while referring the ratio laid down in **Venkatachalam Chetti Vs. Ramaswami Servai** (1 supra) held that:

“It is therefore sought to be contended, if a plaintiff dies pending execution of the decree the L.R. of the decree-holder could be substituted, no period of limitation is applicable. An application can be filed by the L.Rs. of the applicant at any time. The stand of the respondents is therefore that the death occurred during the execution of the decree and they are entitled to be substituted. This point is no longer *'res integra'*. This Court in **Kantheti Damodara Gupta v. Koppineni Venkateswara Rao**, [1979 (1) ALT 372] held, relying upon a Full Bench decision of the Madras High Court in **Venkatachalam v. Rama Swami** [AIR 1932 Mad. 73] that Article 120 of the Limitation Act providing a period of 90 days, applies only to the applications that have to be filed and in the case of suits and not to execution

petitions as Rule 12 of Order 22 CPC expressly provides that in Rule 3 or Order 22 shall apply to execution.”

(iii) In **V. Uthirapathi Vs. Ashrab Ali and Others** (3rd supra), the Supreme Court while dealing with the question of limitation for bringing legal representatives of the decree-holder or judgment-debtor on record in the execution petition and whether the execution petition can be abated if they are not brought on record held at paras 10, 11, 12 & 15 as follows:

“10. If during, the pendency of a regular execution proceeding filed on the basis of a decree or order of a Civil Court, the decree holder or the judgment debtor dies and his legal representatives are not brought on record within ninety days, can the Civil Court dismiss the execution petition as abated?

11. Order 22 Rule 12 of the Code of Civil Procedure reads as follows:

“Order 22 Rule 12: Application of order to proceedings.- Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.”

12. In other words, the normal principle arising in a suit - Before the decree is passed - that the legal representatives are to be brought on record within a particular period and if not, the suit could abate, - is not applicable to cases of death of the decree holder or the judgment debtor in execution proceedings.

15. It is clear, therefore, that if after the filing of an execution petition in time, the decree-holder dies and his legal representatives do not come on record - or the judgment-debtor dies and his legal representatives are not brought on record, then there is no abatement of the execution petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of the execution Court. If it remains pending and if no time- limit is prescribed to bring the legal representatives on record in execution proceedings, it is open in case of death of the decree holder, for his legal representative to come on record at any time. The execution application cannot even be dismissed for default behind the back of the decree holder's legal representatives. In case of death of the judgment debtor, the decree holder could file an application to bring the legal representatives of the judgment-debtor on record, at any time. Of course, in case of death of judgment-debtor, the Court can fix a reasonable time for the said purpose and if the decree holder does not file an application for the aforesaid purpose, the Court can dismiss the execution petition for default. But in any event the execution petition cannot be dismissed as abated. Alternatively, it is also open to the decree holder's legal representatives, to file a fresh execution petition in case of death of the decree holder; *or*, in case of death of the judgment debtor, the decree holder can file a fresh execution petition impleading the legal representatives of the judgment debtor; such a fresh execution petition, if filed, is, in law, only a continuation of the pending execution petition - the one

which was filed in time by the decree holder initially. This is the position under the Code of Civil Procedure.”

(iv) In **Varadarajan Vs. Kanakavalli And Others** (4 supra), the Supreme Court, while re-iterating the principles laid down in **V. Uthirapathi Vs. Ashrab Ali and Others** (3 supra), held at para 8 which reads as follows:

“8. We may state that Order 22 of the Code is applicable to the pending proceedings in a suit. But the conflicting claims of legal representatives can be decided in execution proceedings in view of the principles of Rule 5 of Order 22. This Court in a judgment in **V. Uthirapathi v. Ashrab Ali** held that the normal principle arising in a suit — before the decree is passed — that the legal representatives are to be brought on record within a particular period is not applicable to cases of death of the decree-holder or the judgment-debtor in execution proceedings.....”

It was further observed in para 9 as follows:

“9. The legal representatives are impleaded for the purpose of a suit alone as held by this Court in **Daya Ram & Ors. v. Shyam Sundari** [AIR 1965 SC 1049] wherein it was held that impleaded legal representatives sufficiently represent the estate of the deceased and the decision obtained with them on record will bind not merely those impleaded but the entire estate, including those not brought on record. This Court approved the judgment of the Madras High Court in

Kadir Mohideen Marakkayar v. Muthukrishna Ayyar. [ILR
(1903)26 Mad 230].

(v) In **Sri Padmavathi Rice and Floor Mills Vs. Samudrala Venkateswara Rao and Others** (5 supra), the High Court of Andhra Pradesh held at para 5 as follows:

“5. Since the provisions of Order 22 CPC do not apply to execution proceedings, merely because the first respondent did not bring on record all the legal representatives of the deceased second respondent within 90 days, the E.P. does not abate.”

15. Keeping in view the above legal position, now it is to be examined whether it is necessary or possible to implead or recognize other party already on record as legal representative of the deceased so as to proceed with cause as against the deceased.

16. Here, it is pertinent to mention Order XXI, rule 32(1) and (3) CPC:

‘32. Decree for specific performance for restitution of conjugal rights, or for an injunction;- (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his

detention in the civil prison, or by the attachment of his property, or by both.

(3) Where any attachment under sub-rule (1) or (2) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.'

17. Order XXI rule 32 (1) CPC provides remedy for enforcement of a decree against a judgment debtor when he/she willfully fails to obey a decree for perpetual injunction, by detention in civil prison or attachment of his/her property or both. Further, Order XXI, rule 32(3) CPC provides in the event of the JDr not obeying the perpetual injunction for six months during which attachment is in force, the decree holder is enabled to file an application for sale of the attached property for awarding a reasonable amount of compensation out of the sale proceeds.

18. Thus, the purpose of attachment of the property of JDr under this rule is to see that the decree is obeyed within a period of six months after the attachment of the property of JDr. It is only if the decree is still not obeyed, the property is liable to be sold for the purpose of awarding compensation.

19. As the petitioner is proceeding against the respondent No.4 for enforcement of the perpetual injunction by sending him to civil prison and attachment of his property and thereafter to sell the land to compensate the damages, the relief to send him to prison does not survive on his death. And in so far as the attachment of his property is concerned, as he died before passing order attaching property and consequently there is no scope for compelling him to obey the decree, the execution petition as against JDr No.4 becomes infructuous.

20. If his legal representative(s) who also is/are to obey the decree, continue(s) to disobey the decree, steps can be taken against such person(s) to enforce the decree in both ways and in such case, property that can be attached may not be limited to the estate, if any, left by the deceased JDr alone, but the property of person disobeying may also be subjected to attachment, as violation is by that person(s) and property of person disobeying the decree can be attached for enforcement.

21. In view of the futility, neither the 5th respondent nor any other legal representative, if any, left by the 4th respondent cannot represent the estate of the deceased for enforcement of decree against the 4th respondent. So, there is no need to bring any legal representative on record or record the presence of the 5th respondent as a legal representative of the 4th respondent or representing any other legal

representative(s). But, the 5th respondent will continue in her independent capacity as originally impleaded and also as a person to obey the decree on the death of the 4th respondent in the same way as aforesaid.

22. Subject to the above observations, the petition is allowed to record the death of the 4th respondent by adding the word 'died' against the name of the 4th respondent/JDr in the cause title wherever it is.

The Registry of this Court is directed to get the same recorded.

B.S.BHANUMATHI, J

Dt.10-09-2024

Note:- LR copy to be marked
(B/o)
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