

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2917 OF 2005

S. CHANDRA NAIDU & ORS.

APPELLANTS

VERSUS

B. MUNASWAMY NAIDU (D) BY LRS. & ORS.

RESPONDENTS

O R D E R

This appeal, by special leave, arises from the order dated October 16, 2003 passed by the Andhra Pradesh High Court. By this order, the Division Bench of that Court rejected the appellants' application for bringing them on record as respondents on the ground of delay.

B.M. Seethapathi Naidu @ S. Naidu, plaintiff no.2, in a suit for partition, died on November 14, 1988. Neither the plaintiff no.1 - M. Kamalakaran nor the defendants- B. Munaswamy Naidu and B.M. Krishnamurthy -brought this fact to the notice of the Trial Court. The Trial Court, on conclusion of the trial and after ...2/-

2

hearing the counsel for the parties, on May 8, 2002 decreed the suit for partition and declared that the two plaintiffs and the two defendants have ¼th share each in the scheduled properties.

The defendant no.2 - B.M. Krishnamurthy - preferred first appeal against the judgment and decree of the Trial Court before the High Court. However, in the appeal, plaintiff no.2 - B.N. Seethapathi who had already died - was not shown in the array of parties.

During the pendency of

the appeal, after delay of more than thirteen years, the legal representatives (appellants herein) made an application for their impleadment in the appeal. They also made an application under Section 5 of the Limitation Act for condonation of delay. The applicants put forth the explanation that they were not aware of the civil suit and the proceedings earlier and, therefore, application could not be made earlier. The High Court was not persuaded by the explanation given by the applicants and, accordingly, dismissed the application on the ground of delay.

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3

It is well settled that in a suit for partition, the position of plaintiffs and defendants can be interchangeable and that each party adopts the same position with the other parties. It this backdrop of legal position and having regard to the nature of the suit, although there was long delay on the part of the applicants in making the application for their impleadment, but in view of the fact the suit ended in a preliminary decree declaring share of the parties and appeal therefrom had been preferred by one of the defendants without impleading the legal representatives of the deceased plaintiff no.2, who had already died during the trial of the suit, the High Court ought to have granted the application. Rather, in a situation such as the present one, it was incumbent upon the appellants to implead the heirs and legal representatives of deceased plaintiff no.2, when the appeal was filed, albeit

with the leave of the Court.

Be that as it may, in the peculiar facts and circumstances of the case, we are satisfied that

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4

the High Court erred in not allowing the application made by the appellants for their impleadment in the appeal. Any inconvenience

caused to the defendant no.2 (appellant therein) could be compensated by award of reasonable cost.

Consequently, the appeal is allowed subject to the appellants paying a cost of Rs.15,000/- (Rupees fifteen thousand only) to the respondent no.1(a) - defendant no.2 within four weeks from today. In case, payment of cost is not made

within aforesaid time, this order shall stand recalled and appeal shall stand dismissed.

.....J.
(R.M. LODHA)

.....J.
(SURINDER SINGH NIJJAR)

NEW DELHI,
APRIL 13, 2011.

5

ITEM NO.104

COURT NO.13

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2917 OF 2005

S. CHANDRA NAIDU & ORS.

Appellant (s)

VERSUS

B. MUNASWAMY NAIDU (D) BY LRS. & ORS.

Respondent(s)

(With office report)

Date: 13/04/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s) Mr. T.V. Ratnam, Adv.

For Respondent(s) Mr. Venkateswar Rao Anumolu, Adv.
Mr. Satish Galla, Adv.
For Mr. N. Rajaraman, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the
signed order.

(Neetu Khajuria)
Sr.P.A.

(S.S.R. Krishna)
Court Master

(Signed order is placed on the file.)