

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

Petition(s) for Special Leave to Appeal (Civil) No(s).14997/2013

(From the judgement and order dated 31/01/2013 in CRP No.6363/2012 of The HIGH COURT OF A.P AT HYDERABAD)

JAYARAMA REDDY & ORS. Petitioner(s)

VERSUS

N. SANKAR REDDY Respondent(s)

(With prayer for interim relief)

Date: 03/05/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s) Mr.A.T.M.Rangaramanujam, Sr.Adv.
Mr.Prakhar Sharma, Adv.
Ms.Anu Gupta, A.O.R.

For Respondent(s)

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

This petition is directed against order dated 31.01.2013 passed by the learned Single Judge of the Andhra Pradesh High Court whereby he allowed the revision filed by the respondent, set aside order dated 6.11.2012 passed by Ist Additional Junior Civil Judge, Chittoor in I.A.No...../2012 (CF No.13916/2012 in OS No.1148/1998) and granted the prayer made by the plaintiff- respondent for impleadment of the legal representatives of defendant No.1 as defendant Nos.10 to 15.

We have heard Shri A.T.M. Rangaramanujam, learned senior counsel for the petitioners and perused the record.

Respondent N. Sankar Reddy filed suit (OS No.1148/1998) against N. Rami Reddy and Sivalinga Reddy (predecessor of the petitioners herein) for declaration of title and perpetual injunction. During the pendency of the suit, defendant No.2 died and in his place defendant Nos.3 to 9 were added as parties vide order dated 26.7.2004. After some time, defendant No.1 also died and the respondent filed I.A. No.341/2003 for condonation of delay of 506 days in filing of an application under Order 22 Rule 4 CPC. The trial Court dismissed the application on the ground of delay and the order of the trial Court was upheld by the High Court while dismissing CRP No.3201/2003 filed by the respondent.

Soon after dismissal of the revision filed by the respondent, the petitioners filed IA No.523/2004 for dismissal of the suit on the ground that due to non-impleadment of the legal representatives of defendant No.1, the same had abated. That application was allowed by the trial Court on 9.9.2004. CRP No.5158/2004 filed by the respondent was partly allowed by the High Court and the parties were given liberty to agitate the issue of abatement at the time of disposal of the suit. The appeal filed against the abatement order was also allowed by the High Court vide order dated 28.12.2011 and the matter was remanded to the trial Court for fresh disposal of the suit.

After remand, the respondent filed CF No.13916/2012 under Order 1 Rule 10 CPC, which was dismissed by the trial Court vide order dated 6.11.2012 on the ground that the revision filed by the respondent against the rejection of the prayer made in I.A. No.341/2003 had been dismissed by the High Court.

The respondent challenged the trial Court's order in CRP

No.6363/2012. The learned Single Judge entertained and allowed the same by making the following observations:

"The suit was originally instituted by one plaintiff i.e., petitioner herein, against two defendants. When the 2nd defendant died, petitioner took prompt steps by filing I.A.No.810 of 2004 and the legal representatives were brought on record as defendants 3 to 9. The 1st defendant is said to have died on 31.07.2001 long before I.A. No.810 of 2004 was filed. Had the petitioner been aware of the factum of the death of the first defendant, he would have certainly taken steps to bring the legal representatives of the 1st defendant on record.

The record discloses that defendants 1 and 2 were represented by the same counsel in the trial Court. Rule 10-A of Order XXII C.P.C. places an obligation on the counsel to inform the Court as well as the other party, whenever his client dies, during the pendency of the proceedings. This Court has taken view in several matters that the limitation to file an application to bring the legal representatives of a party to the suit, on record would commence from the date, on which the other party in the suit, receives the intimation through a memo filed under Rule 10-A of Order XXII C.P.C. That having not been done in this case, the proposed respondents cannot resist the attempts made by the petitioner to bring the legal representatives on record, or to implead them as defendants.

It is at the instance of respondents 3 to 9 that the trial Court declared that suit stood dismissed as abated. A decree to that effect was passed on 09.09.2004. The petitioner was rightly advised to file revision as well as an appeal. The reason is that the decree came to be passed in the suit as a consequence of the order in I.A.No.523 of 2004. That order could have been challenged only by filing revision. Since a decree has also been passed, remedy of appeal must be availed, before lower appellate Court. In both the proceedings, the petitioner was successful. The result is that the suit remained on the file of trial Court.

This Court made it amply clear in its order passed in the C.R.P. that the question as to whether the death of the 1st defendant resulted in abatement must be examined independently. It is not a case, where the sole defendant in the suit died. Defendants 3 to 9 were very much on record. Till now, no such effort was made. The presumption is that the suit remained unabated and that at the most, abatement is vis-a-vis the 1st defendant. Now that the efforts are being made to bring the legal representatives of the first defendant on record, there should not be any plausible objection. In case, such of the respondents, who are the legal representatives of the 1st defendant oppose the effort made by the petitioner to implead them in the suit, a presumption has to be drawn to the effect that they do not have any resistance to the offer and the decree, if any, that may be passed in the suit shall bind them also.

It may be true that there was some uncertainty in the matter as to the status of the suit, in the light of the orders passed by this Court and the lower appellate Court.

However, the trial Court ought to have numbered the I.A. and heard the same on merits. Instead, a cryptic order, which does not make any sense, has been passed. Portions of the order are in fact derogatory. It reads:

"Rejected the Hon'ble High Court in C.F.No.5158/2004 given a direction stating that I.A.423/04 in O.S.No.1148/98 has to be agitated by the parties at the time of disposal of the suit the Hon'ble IX AD], CTR in A.S.No.151/05 relating to OS.No. 1148/1998 instructed the court to consider the suit on merits as per order in Hon'ble High Court by giving the opportunity to the parties to agitate the question involved in I.A.No.523/04 at the time of the disposal of the suit. Neither the High Court nor IX AD], CTR has directed the court to conduct the . . . trial or to take further evidence on either side. Therefore petitioner/plaintiff is not entitled to file the present petition. Therefore, this petition is not maintainable and this petition is rejected." (Verbatim reproduction)

Learned Presiding Officer ought to have bestowed proper attention while dealing with the matter of this nature. It is only gross negligence or total indifference or lack of basics on the part of the officer, that bring about such a hopelessly bad order. It is hoped that the officer would not permit such instances to recur.

In our view, the reasons recorded by the learned Single Judge for setting aside the order of the trial Court and allowing the application filed by the respondent under Order 1 Rule 10 CPC are legally correct and the impugned order does not suffer from any patent legal infirmity requiring interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master