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Amrat and ors. Vs. Commissioner, Survey, Settlements and Land Records-cum-custodian General of Evacuee Properties and ors.

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Court : Andhra Pradesh

Decided On : Jul-20-2005

Reported in : 2005(5)ALD140; 2005(4)ALT636

Judge : G. Chandraiah, J.

Acts : Limitation Act - Sections 5 - Schedule - Article 120; Administration of Evacuee Properties Act, 1950; Constitution of India - Articles 226 and 227; Code of Civil Procedure (CPC) - Sections 141 - Order 22, Rule 4; Punjab and Haryana High Court Writ Rules, 1977 - Rule 24

Appeal No. : W.P.M.P. Nos. 18314 and 23405 of 2002 in W.P. No. 1439 of 1995

Appellant : Amrat and ors.

Respondent : Commissioner, Survey, Settlements and Land Records-cum-custodian General of Evacuee Properties and O

Advocate for Def. : G.P. for Revenue for Respondent Nos. 1 and 2 and ;K. Mahipathi Rao, Adv. for Respondent Nos. 3 to 25

Advocate for Pet/Ap. : S. Srinivas Reddy, Adv.

Disposition : Petition allowed

Judgement :
ORDER

G. Chandraiah, J.

1. Heard both the counsel.

2. As 8th and 9th respondents died, W.P.M.P. No. 18314 of 2002 is filed by the writ petitioners for bringing on record the legal representatives of the said respondents i.e., the legal representatives of the 8th respondent as respondents 12 to 16 and the legal representatives of 9th respondent as 17 and 18.

3. Similarly as 3rd respondent also died, W.P.M.P. No.23405/2002 is filed for bringing on record his legal representatives as respondents 19 to 25.

4. The learned counsel appearing for the unofficial respondents Sri K. Mahipathi Rao submitted that the respondents have no objection in respect of bringing on record the legal representatives of 3rd and 8th respondents as respondents 12 to 16 and 19 to 25. With regard to the bringing on record the legal representatives of the deceased 9th respondent is concerned, he vehemently opposed for the same raising contentions referring to provisions under Order 22 of C.P.C. and also relying on the judgment of the Apex Court and the Limitation Act and sought for dismissal of the petition with regard to deceased 9th respondent is concerned. With these contentions, respondents 4 to 25 have filed counter-affidavits to WPMPs.

5. In view of the above submission and considering the facts and circumstances of the case, the legal representatives with respect to 3rd and 8th respondents, are permitted to come on record as respondents 12 to 16 and 19 to 25.

6. Before dealing with the contentions of the counsel for the respondents in opposing to come on record the legal representatives of the 9th respondent, it is expedient to refer to few facts of the writ petition, which is filed questioning the order dated 11-5-1994 passed by the 1st respondent-Commissioner, Survey Settlements and Land Records, reversing the order dated 14-8-1987 of the 2nd

respondent-Joint Collector-cum-Deputy Custodian of Evacuee Properties, Mahaboobnagar, as under.

7. An extent of Acs.23.19 guntas of land situated in Sy. Nos.273, 275 to 279 of Yenugonda village, Mahaboobnagar District belongs to one Sara Begum w/o Ahmedulla Khan, who was declared 'evacuee' under the Administration of Evacuee Properties Act, 1950 and through various proceedings the possession of the land was taken by the Deputy Custodian. One Immadi Pullaiah, who is the father of respondents 3 to 7 filed an appeal before the Additional Custodian claiming title over the schedule lands and by order dated 5-3-1953 it was remanded directing the Deputy Custodian to decide the issue. Basing on the report of the Tahasildar, Yenugonda dated 20-1-1954, the Deputy Custodian, Mahaboobnagar through his order dated 10-6-1955 held that the land belongs to Immadi Pullaiah. Thereafter, Immadi Pullaiah sold an extent of Acs.8.09 guntas in Sy.No.273 of the schedule land, to one Md. Hussan and subsequently after undergoing number of sale transactions, the land was purchased by respondents 8 to 11 herein. The Deputy Custodian, Bombay made a suo motu reference of the matter to Deputy Custodian General New Delhi. By order dated 31-12-1969 the Deputy Custodian directed the Collector to recover possession and held that Immadi Pullaiah has no title over the lands. Challenging the same, the Immadi Pullaiah filed review and it was dismissed on 31-12-1969. Subsequently in the year 1971 the father of the petitioners Tilokchand Kushiram was allotted the schedule land by Custodian of Evacuee properties by order No.Hyd./50/dated 16-4-1971. Immadi Pullaiah challenging the allotment, filed appeals and they were dismissed and subsequently he expired. His legal representatives who are respondents 3 to 7 herein filed W.P. No. 3812/77 and the respondents 8 to 11 filed W.P. No.313/78 and this court by common order dated 7-2-1980 remanded the matter to Deputy Custodian, Mahaboobnagar to decide the matter on merits after giving opportunity to all the parties. By order 14-8-1987 the Deputy Custodian, considering the material on record held that respondents 3 to 11 have no right or title over the schedule land. Challenging the order dated 14-8-1987, the respondents 3 to 11 filed appeal and by the impugned order in the present writ petition dated 11-5-1994 in Case No.EP 3/715/87 the 1st respondent reversed order dated 14-8-1987 and hence the present writ petition by the petitioners, who

are the legal representatives of the original allottee of the evacuee property. However, they are being represented by the G.P.A. holders Hassanand and Deepak.

8. The official respondents filed counter and the 3rd respondent in the writ petition filed counter on behalf of all the other respondents, including the deceased 9th respondent.

9. From the above facts it is clear that for claiming right over the schedule properties, both the parties have approached number of authorities and also filed writ petitions before this Court. Therefore, substantial interest of both the parties are involved and it can be decided only after a comprehensive adjudication.

10. In this back ground it is necessary to consider the contentions of the respective parties.

11. The learned counsel for the contesting respondents Sri Mahipathi Rao submitted that the 9th respondent died on 2-10-1994 and the writ petition was filed on 27-1-1994 i.e., after the death of the 9th respondent. He stated that in the counter filed by contesting respondents in the year 1996 at paragraph No. 1 it was specifically stated that 'the respondent No. 9 died' and in spite of the same, the petitioners did not take any steps to bring on record his legal representatives within the period of limitation and, therefore, the writ petition stands abated as against the 9th respondent is concerned. He stated that the petition in WPMP No.18314/2002 was filed on 9-8-2002 without any petition to condone the delay. Therefore, he contended that without there being any petition under Section 5 of the Limitation Act, explaining the reasons for condoning the delay, filing a petition straightaway for bringing on record the legal representatives of the 9th respondent is not maintainable. He submitted that delay has to be necessarily explained and a petition has to be filed under Section 5 of the Limitation Act. In support of his contention, he relied on the Judgment of the Apex Court in Ragho Singh v. Mohan Singh, : (2001)9SCC717 . He further contended that as per Rule 24 of the Writ Rules, 1977 the provisions of C.P.C. would apply to writ proceedings.

12. On the other hand, the learned counsel appearing for the writ petitioners contended that in the counter-affidavit filed it is only stated that the 9th respondent died and no particulars are given and, therefore, in the reply affidavit filed to the counter, the petitioners sought for the information, but the same was not furnished. He submitted that in fact the petitioners were not aware of the death of 8th and 9th respondents. He further submitted that the counsel for respondents 3 to 7 and 10 and 11 served a memo dated 21-6-02 on 19-7-02 stating that 8th respondent died and the same could not be brought on record due to oversight and that in the said memo it is stated that 9th respondent died on 2-10-1994 even before the writ petition was filed and though, in the reply affidavit filed by the petitioners to the counter, the respondents were called upon to furnish the details of the legal representatives of the 9th respondent, the same were not furnished. Therefore, immediately after serving of the memo dated 21-6-2002 the petition was filed for bringing on record the legal representatives of the deceased respondents and there is no question of any delay and as such no petition under Section 5 of the Limitation Act, need be filed. He submitted that even if the writ petition stands abated a petition to bring on record the legal representatives on record would be sufficient and this can be construed also as a petition for setting aside the abatement order. In support of this contention, he relied on the judgment of the Apex Court in Mithailal Dalsangar Singhi v. Annabai Devram Kini, : AIR 2003 SC4244 . He further submitted that when the contesting respondents have no objection for bringing on record the legal representatives of the 3rd and 8th respondents, they cannot have any objection for bringing on record the legal representatives of the 9th respondent, since all the parties have pursued the matter before the lower authorities jointly. He further submitted that since this is a proceeding under Article 226 of the Constitution of India, strict procedural technicalities may not be followed and in the interest of justice, the legal representatives of 9th respondent may be permitted to come on record.

13. From the above facts the question that arises for my consideration is whether in a writ proceedings under Article 226 of the Constitution of India, strict procedural formalities under the Civil Procedure Code, particularly Order 22, which deals with death, marriage and insolvency of parties have to be complied with?

14. As already noted above, both the parties have initiated number of proceedings before the revenue authorities and also filed writ petitions before this court and as such it is evident that the substantial interest of both the parties are seriously involved in the matter. As stated by the counsel for the petitioners, in the counter filed by the contesting respondents, which is dated 2-7-1996 it is stated that 'the respondent No. 9 died' and no particulars with regard to the date of death and the information pertaining to his legal representatives were given. The counsel for the petitioners asserted that though this information was sought for in the reply affidavit, the same was not furnished. It is vehemently contended that the petitioners are not aware of the death of the 8th and 9th respondents. It is stated that the counsel for the respondents furnished the particulars of the legal representatives of the deceased 8th respondent only under memo dated 21-6-2002, served on the counsel for the petitioners on 19-7-2002 and the legal representatives petition was filed on 8-8-2002. These facts are not being disputed by the learned counsel for the respondents. Further it is to be noted that the counsel for the respondents stated that he has no objection with regard to allowing of the legal representatives of the 3rd and 8th respondents to come on record. From the facts noted above, it could be further seen that the father of the 3rd respondent Immadi Pullaiah allegedly sold the part of the schedule land to one Mr. Mohd. Hussan, and after passing through different sale transactions it was ultimately purchased by respondents 8 to 11 herein under a registered sale deed and both the parties have moved this court earlier by way of a writ petition and pursuant to the common order of this court dated 7-2-1998 in W.P. Nos. 3812/1977 and 313/1978 the matter was remanded and after remand all the present parties to the writ petition contested the matter and the primary authority i.e., the 2nd respondent herein negatived the claim of the contesting respondents and in the appeal, the 1st respondent, who is the appellate authority held in their favour and in the meanwhile in the year 1971 the schedule land was allotted to the father of the petitioners under allotment No. 50 dated 16-4-1971 by the Custodian of the Evacuee properties. Therefore, this shows that the lis can be adjudicated once for all only in the presence of all the interested parties. Curiously as noted above, the respondents have no objection for permitting the legal representatives of the 3rd and 8th respondents to come on record. Therefore, when the rights of

the parties are so inextricably woven, it is not desirable to eliminate one party on the ground of technical laches and decide the lis, since it would result in miscarriage of justice and the procedural formalities are only handmade of justice. Therefore, I find some force in the contention of the counsel for the petitioners that when the respondents have no objection for bringing on record the legal representatives of the other deceased respondents, they cannot have objection with regard to 9th respondent, because all the deceased respondents have jointly pursued all the proceedings till the filing of the present writ petition and the 3rd respondent also filed counter to this writ petition on behalf of all the other respondents, including deceased 9th respondent, denying all the writ averments and bringing to the notice of this court different facts.

15. Further, it shall not be forgotten that these are proceedings under Article 226 of the Constitution of India, which vests the High Courts with extraordinary jurisdiction in order to do substantial and expeditious justice between the parties and which shall not be hindered with procedural technicalities.

16. In this regard it is pertinent to note the observations of the Hon'ble Supreme Court in the decision reported in Puran Singh v. State of Punjab, : [1996]1SCR730 , wherein the Apex Court while dealing with the delay in bringing on record the legal representatives of the deceased respondent in a writ petition and the applicability of Order 22 C.P.C. and Section 141 of C.P.C. and the Writ Rules of Punjab and Haryana High Court, held that High Court is not per se bound by the provisions of Order 22 Rule 4 of C.P.C. and that High Court in exercise of extraordinary jurisdiction under Articles 226 and 227 is free to adopt its own procedure which is reasonable and expeditious and the provisions of C.P.C. are only guiding. The Apex Court further held that if there is delay in bringing on record the legal representatives of the deceased parties, the High Court has power to allow the substitution of legal representatives even after the period of 90 days prescribed under Article 120 of the Limitation Act and there is no question of any automatic abatement of the writ proceedings. It was further held that this power has to be exercised on well known and settled principles in respect of exercise of discretionary power by the High Court and that if the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondents was not

intentional and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representatives and proceed with the hearing of the writ petition. The relevant excerpts from the above judgment of the Apex Court at paragraphs 7, 11 and 12 are extracted as under for ready reference:

'7. When the High Court exercises extraordinary jurisdiction under Article 226 of the Constitution, it aims at securing a very speedy and efficacious remedy to a person, whose legal or constitutional right has been infringed. If all the elaborate and technical rules laid down in the Code are to be applied to writ proceedings the very object and purpose is likely to be defeated. According to us, in view of the conflicting opinions expressed by the different courts, Parliament by the aforesaid amending Act introduced the explanation saying that in Section 141 of the Code the expression 'proceedings' does not include 'any proceeding under Article 226 of the Constitution' and statutorily recognized the views expressed by some of the courts that writ proceedings under Article 226 of the Constitution shall not be deemed to be proceedings within the meaning of Section 141 of the Code. After the introduction of the explanation to Section 141 of the Code, it can be said that when Section 141 provides that the procedure prescribed in the code in regard to suits shall be followed, as far as it can be made applicable 'in all proceedings in any court of civil jurisdiction' it shall not include a proceeding under Article 226 of the Constitution. In this background, according to us, it cannot be held that the provisions contained in Order 22 of the Code are applicable per se to writ proceedings.... The procedure prescribed in respect of suit in the code if made applicable to the writ proceedings then in many cases it may frustrate the exercise of extraordinary powers by the High Court under Articles 226 and 227 of the Constitution.

11. We have not been able to appreciate the anxiety on the part of the different courts in judgments referred to above to apply the provisions of the Code to writ proceedings on the basis of Section 141 of the Code. When the Constitution has vested extraordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all courts and tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising such power and jurisdiction

have to be traced and found in Articles 226 and 227 itself. No useful purpose will be served by limiting the power of the High Court by procedural provisions prescribed in the Code. Of course, on many questions, the provisions and procedure prescribed under the Code can be taken up as guide while exercising the power, for granting relief to persons, who have invoked the jurisdiction of the High Court. It need not be impressed that different provisions and procedures under the Code are based on well-recognized principles for exercise of discretionary power, and they are reasonable and rational. But at the same time, it cannot be disputed that many procedures prescribed in the said Code are responsible for delaying the delivery of justice and causing delay in securing the remedy available to a person who pursues such remedies. The High Court should be left to adopt its own procedure for granting relief to the persons concerned. The High Court is expected to adopt a procedure, which can be held to be not only reasonable but also expeditious.

12. As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives. After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding as to what shall be a reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substitution of the heirs of the deceased defendant or the respondent. However, there is no question of automatic abatement of the writ proceedings. Even if an application is filed beyond 90 days of the death of such respondent, the court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well-known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of the writ petition or the writ appeal, as the case may

be....'

17. From the above judgment of the Apex Court it is clear that the High Court while dealing with proceedings under Article 226 or 227 of the Constitution of India, can adopt its own procedure which is reasonable, to do complete justice between the parties and strict adherence of the provisions of C.P.C. is not always necessary and they can be taken only as guiding rules.

18. Coming to the facts of the present case, as already stated above, the father of the respondents 3 to 7 who got some right over the schedule property, sold this land to Mr. Hussan, which was ultimately purchased by respondents 8 to 11. Further all the parties to the writ petition have initiated number of proceedings and also particularly the respondents 8 to 11, i.e., including the 9th respondent, whose legal representatives are sought to be brought on record, have filed W.P. No. 313/1978, after the primary authority i.e., the 2nd respondent held against them. Therefore all the parties have substantial interest in the lis. Further the case of the petitioners is that they have no knowledge about the death of respondents 8 and 9. Even the contesting respondents only stated in the counter that 9th respondent died and no particulars were given even though they were sought by way of reply affidavit. This fact was not being disputed by the counsel for respondents or in the counter filed in WPMPS. And immediately after filing of the memo in the year 2002, the present petition is filed for bringing on record the legal representatives of the deceased respondents. Further, except on the ground of limitation with regard to bringing on record the legal representatives of the 9th respondent the counsel for the other contesting respondents expressed no objection for impleading the legal representatives of the 3rd and 8th respondents, obviously this could be according to them, is in time. As per the judgment of the Apex Court in Puran Singh's case (3 supra), if there is delay in filing the petition to bring on record the legal representatives of the deceased party if the right to sue survives, sufficient cause has to be shown. Therefore, in view of the peculiar facts and circumstances of the present case, and considering the reasons given by the petitioners in the affidavit filed in support of the miscellaneous petitions, and counter was already filed on behalf of deceased 9th respondent, I am of the opinion that the legal representatives of the 9th respondent shall be brought on record, which (sic.

without) much dilation on the issue of filing a petition under Section 5 of the Limitation Act.

19. In fact, as already noted above, the schedule land was purchased by respondents 8 to 11 herein. So as stated above, the lis between the parties is so intricately connected that it is not safe and desirable to exclude one party and decide the lis among the remaining parties. Further as per the judgment of the Apex Court, strict technical formalities envisaged under the Civil Procedure Code are not per se applicable to writ proceedings and the High Court can adopt its own procedure while dealing with proceedings under Article 226 of the Constitution, which is reasonable and just, to do complete justice between the parties. Therefore, I once again reiterate that in the facts and circumstances of the present case and in view of the reasons stated in the affidavit filed in support of the miscellaneous petition; and in view of the above discussion and also since the writ averments have already been denied on behalf of the deceased 9th respondent by way of counter-affidavit; and in order to have a comprehensive adjudication and to do complete justice between the parties, I am of the opinion that the legal representatives of the 9th respondent shall be allowed to come on record.

20. In view of the above discussion and the judgment of the Apex Court in Puran Singh's case (cited 3 supra), the contentions raised by the counsel for the contesting respondent relying on Order 22 of C.P.C. and Rule 24 of the Writ Rules, 1977, does not merit for consideration and they are rejected. The Judgment of the Apex Court in Ragho Singh's case (cited 1 supra) though unexceptionable, is a proceedings before the revenue official and is not a proceeding under Article 226 of the Constitution. Therefore, in view of the latitude given under Articles 226 and 227 of the Constitution of India to High Courts and also as per the judgment of the Apex Court in Puran Singh's case, strict procedural formalities, which hinder delivery of justice, may not be followed.

21. The issue framed for consideration is answered in the negative.

22. In view of the above facts and circumstances, both the petitions are allowed and the legal representatives of the 3rd respondent are allowed to come on record as respondents 19 to 25; legal representatives of the 8th respondent are allowed

to come on record as respondents 12 to 16; and the legal representatives of the 9th respondent are allowed to come on record as respondents 17 and 18.

23. In the circumstances of the case, there shall be no order as to costs.

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