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Court : Andhra Pradesh

Decided On : Jun-07-2006

Reported in : 2006(5)ALD4

Judge : P.S. Narayana, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 151 - Order 22, Rules 4 and 10A

Appeal No. : CRP No. 5587 of 2004

Appellant : Gode Chandra Reddy and ors.

Respondent : Gade Ram Reddy and ors.

Advocate for Def. : P. Sri Harsha Reddy, Adv. for Respondent Nos. 1 to 8 and ;P. Venkat Reddy, Adv. for the Respondent Nos. 9 to 12

Advocate for Pet/Ap. : K. Mahipathi Rao, Adv.

Disposition : Appeal dismissed

Judgement :
ORDER

P.S. Narayana, J.

1. Heard Sri J. Suresh Babu representing Sri K. Mahipathi Rao, learned Counsel for the revision petitioners and Sri Venkat Reddy, the learned Counsel representing respondents.

2. The civil revision petition is filed by the petitioners aggrieved by the order made in IA No. 2853 of 2003 in AS No. 13 of 2003 on the file of III Additional District Judge, Nalgonda. The application filed under Order 22 Rule 4 read with 151 of the Code of Civil Procedure, hereinafter in short referred to Code, to implead the legal representatives of the deceased person, the 7th respondent as respondents in appeal, had been dismissed. Aggrieved by the same, the present revision is preferred.

3. The learned Counsel for the revision petitioners would maintain that the petitioners had no knowledge about the death of the party at all and when they came to know about the death, immediately they moved the application and hence the question of limitation would not arise. Since from the date of knowledge the application is perfectly within limitation, the learned Counsel would also maintain that no separate application need be filed for condonation of delay in such matters. The learned Counsel also made elaborate submissions in relation to Order 22 Rule 10-A of the Code and would maintain that inasmuch as the parties bound to intimate the death, had not intimated, in accordance with the procedure, the aforesaid provision being mandatory, the learned Judge totally erred in dismissing the application on unsustainable grounds. The learned Counsel also placed reliance on certain decisions.

4. Sri P. Venkat Reddy, the learned Counsel representing respondents, however, would maintain that it is true that a duty is cast upon the party to intimate the death as contemplated under Order 22 Rule 10-A of the Code. The learned Counsel would also maintain that it is true that as far as this Court is concerned, an opinion was expressed that the said provision is mandatory. However, the learned Counsel would maintain that here is a case where no separate application either for condonation of delay or for setting aside abatement had been thought of. The learned Counsel would also maintain that it is not as though the parties are strangers, they are close relatives and hence to contend that they have no

knowledge about the death of this party, cannot be a sustainable reason or ground.

5. Heard the Counsel.

6. The application, IA No. 2853 of 2003 in AS No. 13 of 2003 on the file of III Additional District Judge, Nalgonda, was filed under Order 22 Rule 4 read with Section 151 of the Code to implead the legal representatives of the decased-7th respondent as respondents in the appeal. It is stated that the petitioners came to know after filing of the above appeal on 23.7.2003 that the 7th respondent-Gade Veera Reddy died leaving his wife and daughters as legal heirs and hence they are to be added as legal representatives of the deceased-7th respondent.

7. 11th respondent filed counter denying the allegations and taking a stand that Veera Reddy died in the month of December 1998. Several other contentions were raised as to how the application is barred by limitation and how the same cannot be allowed. The learned Judge recorded reasons in detail and ultimately dismissed the application.

8. In Kadali Achamma and Ors. v. Vuppuganti Sitapati Rao and Ors. 1990 (2) ALT 610, the learned Judge of this Court held that an application for condonation of delay in filing an application to bring legal representatives of the deceased plaintiff on record and Anr. application to bring on record the legal representatives, the dismissal of application on the ground that separate applications for condonation of delay in seeking to set aside abatement of the suit and to set aside abatement had not been filed cannot be sustained and applications filed can be treated as applications for the relief with regard to abatement, the reasons being the same for both.

9. In CRP No. 2039 of 1993, dated 2.8.1993, the learned Judge of this Court observed as hereunder:

So far as first point is concerned viz., that there is delay in filing the application and that limitation commences from the date of death is concerned, the learned Judge is not right. After the amendment, it made very clear that it is the duty of the

Advocate who is appearing for the deceased-party to inform other Counsel about the death of the party to enable the other Counsel to take appropriate proceedings to bring the legal representatives on record. In this case, admittedly, that procedure was not adopted.

It is represented that notice of death of the party was given by the Counsel representing the deceased to the petitioner only on 12.11.1992 and the applications for bringing the legal representatives on record was filed on 17.11.1992 within a period of five days.

Having regard to the above fact, I am of the opinion that there is no delay in seeking to bring the legal representatives of the deceased on record.

10. In Gangadhar and Anr. v. Raj Kumar : AIR 1983 SC1202 , the Apex Court while dealing with Order 22 Rule 10-A of the Code observed as hereunder:

Rule 10-A was introduced in order to avoid procedural justice scoring a march over substantial justice. The legislative intention of casting a burden on the advocate of a party to give intimation of the death of the party represented by him and for this limited purpose to introduce a deeming fiction of the contract being kept subsisting between the advocate and the deceased party was that the other party may not be taken unawares at the time of hearing of the appeal by springing surprise on it that the respondent is dead and appeal has abated. In the present case the High Court was in error in refusing to set aside the abatement.

11. Reliance was placed on the decisions in Vijayalakshmi Jayaram v. M.R. Parasuram and Ors. 1995 (2) ALD 119 : 1995 (2) ALT 32 and Budumuru Vijayalakshmi v. Ponnada Krishna Rao 2005 (5) ALD 192.

12. Here is a case where the party appears to have died during the pendency of the suit. For sufficiently a long time, the petitioners kept quiet and at the appellate stage, an application was moved to bring on record the legal representatives without any other application whatsoever and in these circumstances the petitioners intend to take advantage of Order 22 Rule 10-A of the Code on the ground that no intimation was given. It is also stated that the suit is for the relief of

perpetual injunction simplicitor. It is no doubt true that even in a personal action of this nature, inasmuch as immovable property would be involved, the legal representatives can be brought on record, but, however, in the peculiar facts and circumstances of the case inasmuch as the view expressed by the learned Judge cannot be sustained, this Court is of the considered opinion that the impugned order to be set aside and accordingly hereby set aside and the matter is remitted for giving opportunity to both the parties to let in necessary evidence in this regard to establish their respective contentions and in the light of the back drop of the observations made supra and the decisions cited above, the learned Judge to pass appropriate orders after giving opportunity to both the parties. It is also made clear that the revision petitioners are at liberty to move additional appropriate applications if they are so advised in this regard.

13. With the above observations, the civil revision petition is allowed to the extent indicated above. No order as to costs.

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