IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

TUESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HON'BLE SRI JUSTICE B KRISHNA MOHAN

CIVIL REVISION PETITION NO: 2142 OF 2024

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to allow the present C.R.P. by setting aside the Order and Decree passed I.A.No. 281 of 2024 in O.S.No. 262 of 2002 dated 08/08/2024 The Court of the Additional Civil Judge (Senior Division) Chittoor.

Between:

B. Santhosh, S/o. B.S. Balakrishnan Naidu, Aged about 48 years, Occ. Cultivation, R/o. Setteri Village, Thumbakuppam Post, Bangarupalyam Mandal, Chittoor District.

...PETITIONER/PETITIONER/7th DEFENDANT

AND

1. K. Chengamma Naidu, (Died)
2. K. Jayaprada, W/o. Late K.Chengama Naidu, Aged about 59 years, Occ House Wife, R/o. D.No.2-621/1, Santhinagar Colony, Phase I, Chittoor.
3. K.R. Padmavathy, D/o. Late K.Chengama Naidu, Aged about 39 years, R/o. D.No.2-621/1, Santhinagar Colony, Phase I, Chittoor.
4. K.R.V. Prasad, S/o. Late K. Chengama Naidu, Aged about 35 years. Rep by its Power of Attorney Holder and brother K.R.Sudhir, S/o. Late

K. Chengama Naidu, Occ Employee, R/o. D.No.2-621/1, Santhinagar Colony, Phase I, Chittoor.

5. K.R.Sudhir, S/o. Late K.Chengama Naidu, Aged about 51 years, Occ Cultivation, R/o. D.No.2-621/1, Santhinagar Colony, Phase I, Chittoor.

6. Smt. K. Jagadamba, (Died).

7. B.S.Balakrishna Naidu, (Died)

8. Smt. L. Anasuya, W/o. Late L. Ethirajulu Naidu, Aged about 72 years, R/o. Mutharapalli Village, Thavanampalli Mandal, Chittoor District.

9. B. Kasthuri, W/o. B. Balakrishna Naidu, Aged about 69 years, R/o. Mutharapalli Village, Thavanampalli Mandal, Chittoor District.

10. V.Naga Bushana, W/o. V.Chandrasekhar Naidu, Aged about 58 years, R/o. Flat No. 3, 3rd floor, Cross Bhuvaneshwari Nagar, Bangalore.

11. . B.Ramani, W/o. B.R.Mohan Kumar, Aged about 50 years, R/o. D.No. 17-54, Marvel Infinity, 33th Cross, 1th Main Banasankari II Stage, Bangalore.

12. B.Sandip, S/o. B.S. Balakrishnan Naidu, Aged about 46 years, Occ Business, R/o. Mutharapalle Village, Patnam Post, Thavanampalle Mandal, Chittoor District.

...RESPONDENTS/RESPONDENTS/PLAINTIFFS AND DEFENDANTS No. 1 to 6 & 8

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S.No. 262/2002 on the file of the

Additional Civil Judge (Senior Division) Chittoor, pending disposal of the above CRP.

Counsel for the Petitioner : SRI V V N NARASIMHAM

Counsel for the Respondent Nos.9 to 12 : SRI P SAI SURYA TEJA

Counsel for the Respondent No.5 : SRI A VENKATA DURGA RAO

Counsel for the Respondent No.8 : SRI MANNAVA JAGAN MOHAN RAO

Counsel for the Respondent Nos.1 to 4 :

The Court made the following ORDER :

* THE HON'BLE SRI JUSTICE B KRISHNA MOHAN

+ CIVIL REVISION PETITION No.2142 of 2024

Between:

B SANTHOSH, S/O. B.S. BALAKRISHNAN NAIDU, AGED ABOUT 48 YEARS, OCC CULTIVATION, R/O. SETTERI VILLAGE, THUMBAKUPPAM POST, BANGARUPALYAM MANDAL, CHITTOOR DISTRICT.

.... Petitioner

Versus

$ K CHENGAMMA NAIDU, DIED AND OTHERS.

.....Respondents

DATE OF ORDER PRONOUNCED 31.12.2024.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE B KRISHNA MOHAN

1. Whether Reporters of Local newspapers may be allowed to see the Order? ✓ Yes/No
2. Whether the copies of order may be marked to Law Reporters/Journals? ✓ Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Order? Yes/No ✓

* THE HON'BLE SRI JUSTICE B KRISHNA MOHAN

+ CIVIL REVISION PETITION No.2142 of 2024

% DATE 31.12.2024

Between:

B SANTHOSH, S/O. B.S. BALAKRISHNAN NAIDU, AGED ABOUT 48 YEARS, OCC CULTIVATION, R/O. SETTERI VILLAGE, THUMBAKUPPAM POST, BANGARUPALYAM MANDAL, CHITTOOR DISTRICT.

Petitioner

Versus

$ K CHENGAMMA NAIDU, DIED AND OTHERS.

....Respondents

! Counsel for the petitioner : V V N NARASIMHAM

^ Counsel for the respondents:

1. VENKATA DURGA RAO ANANTHA
2. JAGAN MOHAN RAO MANNAVA
3.
4. P SAI SURYA TEJA

<Gist:

>Head Note:

? Cases referred:

1995 0 Supreme(SC) 619

APHC010410432024

[3233]

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

TUESDAY ,THE THIRTY FIRST DAY OF DECEMBER TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN

CIVIL REVISION PETITION NO: 2142/2024

Between:

1. B SANTHOSH, S/O. B.S. BALAKRISHNAN NAIDU, AGED ABOUT 48 YEARS, OCC CULTIVATION, R/O. SETTERI VILLAGE, THUMBAKUPPAM POST, BANGARUPALYAM MANDAL, CHITTOOR DISTRICT.

...PETITIONER

AND

1. K CHENGAMMA NAIDU, DIED
2. K JAYAPRADA, W/O. LATE K,CHENGAMA NAIDU AGED ABOUT 59 YEARS, OCC HOUSE WIFE, R/O. D.NO.2-621/1, SANTHINAGAR COLONY, PHASE I, CHITTOOR.
3. K R PADMAVATHY, , D/O. LATE K.CHENGAMA NAIDU, AGED ABOUT 39 YEARS, R/O. D.NO.2-621/1, SANTHINAGAR COLONY, PHASE I, CHITTOOR.
4. K R V PRASAD, , S/O. LATE K. CHENGAMA NAIDU, AGED ABOUT 35 YEARS. REP BY ITS POWER OF ATTORNEY HOLDER AND BROTHER K.R.SUDHIR, S/O. LATE K. CHENGAMA NAIDU, OCC EMPLOYEE, R/O. D.NO.2-621/1, SANTHINAGAR COLONY, PHASE I, CHITTOOR.
5. K R SUDHIR, S/O. LATE K.CHENGAMA NAIDU, AGED ABOUT 51 YEARS, OCC CULTIVATION, R/O. D.NO.2-621/1, SANTHINAGAR COLONY, PHASE I, CHITTOOR.

6. SMT K JAGADAMBA, (DIED).

7. B S BALAKRISHNA NAIDU, (DIED)

8. SMT L ANASUYA, W/O. LATE L. ETHIRAJULU NAIDU, AGED ABOUT 72 YEARS, R/O. MUTHARAPALLI VILLAGE, THAVANAMPALLI MANDAL, CHITTOOR DISTRICT.

9. B KASTHURI, W/O. B. BALAKRISHNA NAIDU, AGED ABOUT 69 YEARS, R/O. MUTHARAPALLI VILLAGE, THAVANAMPALLI MANDAL, CHITTOOR DISTRICT. 10.

10. V NAGA BUSHANA, W/O. V.CHANDRASEKHAR NAIDU, AGED ABOUT 58 YEARS, R/O. FLAT NO. 3, 3RD FLOOR. CROSS BHUVANESHWARI NAGAR, BANGALORE.

11. B RAMANI, , W/O. B.R.MOHAN KUMAR, AGED ABOUT 50 YEARS, R/O. D.NO. 17-54, MARVEL INFINITY, 33TH CROSS, 1TH MAIN BANASANKARI II STAGE, BANGALORE.

12. B SANDIP, , S/O. B.S. BALAKRISHNAN NAIDU, AGED ABOUT 46 YEARS, OCC BUSINESS, R/O. MUTHARAPALLE VILLAGE, PATNAM POST, THAVANAMPALLE MANDAL, CHITTOOR DISTRICT.

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased topleased to allow the present C.R.P. by setting aside the Order and Decree passed I.A.NO. 281 OF 2024 IN O.S.NO. 262 OF 2002 dated 08/08/2024 The Court of the Additional Civil Judge (Senior Division) Chittoor and to pass

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to stay all further proceedings in O.S.No. 262/2002 on the file of the Additional Civil Judge (Senior Division) Chittoor, pending disposal of the above CRP and pass

Counsel for the Petitioner:

1. V V N NARASIMHAM

Counsel for the Respondent(S):

1. VENKATA DURGA RAO ANANTHA
2. JAGAN MOHAN RAO MANNAVA
3.
4. P SAI SURYA TEJA

The Court made the following Order:

Heard the learned Senior Counsel for the petitioner and the learned counsel for the respondent Nos.9 to 12.

2. This revision is filed against the order passed in I.A.No.281 of 2024 in O.S.No.262 of 2002 on the file of Additional Civil Judge (Senior Division), Chittoor, dated 08.08.2024 in partly allowing the petition permitting the petitioner/7th defendant to participate in the suit proceedings at the stage of arguments only.

3. The petitioner is the 7th defendant in the suit and the respondent Nos.9 to 12 are the defendant Nos.4, 5, 6 and 8 in the suit.

4. The learned Senior Counsel for the petitioner submits that the petitioner/7th defendant is only aggrieved of the order passed by the Court below only to the extent of permitting the petitioner to participate in the suit proceedings at the stage of arguments only. Having permitted to participate in the suit proceedings, the trial Court ought to have allowed the petitioner/7th defendant to avail all the consequences instead of limiting the role of participation from the arguments stage only. When the petitioner/7th defendant was allowed to file the additional written statement in the suit proceedings, the

said defendant must be in a position to participate in the suit proceedings from the stage of inception of the additional written statement. When the defendant No.8 was allowed to submit his written statement and when there was no restriction to participate from the stage of arguments only, inserting such restriction in the order dated 08.08.2024 for this petitioner/7th defendant is discriminatory as the petitioner would be deprived of seeking framing of additional issues if any and participation in the trial to cross examine the witnesses in terms of the additional averments made in the written statement. Since the plaint was amended, as the defendant Nos.1 and 2 died and their legal representatives were brought on record permitting to file additional written statement, it is just and necessary to allow the subsequent defendants who came on record to participate in the trial, if necessary, by reopening the same, but no useful purpose would be served if they are permitted to participate at the stage of arguments only without subjecting them for examination and cross examination in the course of trial.

5. On the other hand, the learned counsel appearing for the above said respondents/defendants submits that the 2nd defendant who is the father of the petitioner/7th defendant already filed written statement on 07.06.2003 itself and the petitioner has come on record as one of the legal representatives of the deceased 2nd defendant. Even if he is allowed to file additional written statement he need not be permitted to seek for reopening of the trial and restricting him to participate at the stage of arguments only, no prejudice would be caused as the necessary evidence was already let in for the

defendants. Merely because there are *inter se* disputes amongst the defendants, that cannot be a ground for reopening of the trial at the instance of one of the legal representatives of the deceased defendant who initially contested the suit by filing the written statement. Earlier the plaintiff filed C.R.P.No.2324 of 2014 against the order of recalling of DW.1 for further cross examination which was dismissed by this Hon'ble Court on 08.09.2023. When the 2nd respondent died, defendant Nos.6 to 8 are brought on record as the legal representatives of the 2nd defendant. In this case, the 3rd defendant also filed written statement on 04.04.2024.

He refers to the Order 22 Rule 4 C.P.C. at this stage which reads as under:

> **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 party 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.

He also refers to the decision of the Hon'ble Supreme Court of India in ***Vidyawati v. Man Mohan and others***[1] in Special Leave Petition (Civil) No.9356 of 1995 dated 01.05.1995 for the said provision of Order 22 Rule 4(2) C.P.C., wherein it is observed in para Nos.3 & 6 as under:

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[1] 1995 0 Supreme(SC) 619

(3) Whether the petitioner has independent right, title and interest dehors the claim of the 1st defendant is a matter to be gone into at a later proceedings. It is true that when the petitioner was impleaded as a party defendant, all right under Order 22 Rule 4(2) and defences available to the deceased defendant become available to her. In addition, if the petitioner had any independent right, title or interest in the property then she had to get herself impleaded in the suit a party defendant in which she could set up her own independent right, title and interest to resist the claim made by the plaintiff or challenge the decree that may be passed in the suit.

(6) It is open to the petitioner to implead herself in her independent capacity under Order 1 Rule 10 or retain the right to file independent suit asserting her own right. We do not find any error of jurisdiction or material irregularity committed in the exercise of jurisdiction by the Court below warranting our interference. The S.L.P. is accordingly dismissed.

He further submits that as per the plaint of the said suit, the cause of action for filing the suit arose on 25.12.2000, the date of execution of the Will by Balla Raghava Naidu in favour of the 1st defendant, on 31.01.2001, the date on which the said Balla Raghava Naidu died and on several dates and in the recent past when the defendants claim that they are having right in the plaint schedule properties before both the plaintiffs and defendants and the relief sought in the said suit against the defendants is that to declare that the plaintiffs are the absolute owners of the plaint schedule properties and for grant of consequential relief of injunction in favour of the plaintiffs with respect to the plaint schedule properties in which originally the 2nd defendant in his lifetime filed the written statement stating that there are no merits in the suit and the unregistered Will dated 25.12.2000 is a forged and fabricated document and as such the document cannot carry any evidentiary value to

prove the claim of the petitioners against the defendants in respect of the plaint schedule properties.

6. In view of the above said facts and circumstances and upon consideration of the rival submissions made, it is to be seen that the above I.A.No.281 of 2024 in O.S.No.262 of 2002 on the file of Additional Civil Judge (Senior Division), Chittoor was filed by the petitioner/7th defendant stating that the filing of written statement by him is very much necessary in the interest of justice as the plaintiffs filed the suit basing upon the false and fabricated documents as heavy stakes are involved in the above said suit, the petitioner/7th defendant may be permitted to file the additional written statement apart from giving necessary reason for not filing the same on the earlier occasion. In the written statement of the 7th defendant/petitioner herein, it was averred that he is adopting the written statement filed by the 2nd defendant in respect of all the material facts mentioned in para Nos.6 to 10 of the plaint.

In view of the amended plaint, this defendant is filing additional written statement stating that during the pendency of the above said suit, the 1st defendant died intestate and she showed the entire property in favour of the 2nd defendant. Entire plaintiff's properties including the plaint schedule properties are in joint possession of the family members of the 2nd defendant. The other legal heirs of the 2nd defendant are creating fabricated, collusive documents to defeat the interest of this 7th defendant which cannot be looked into as they are not binding upon this defendant. He also submitted that he

filed the suit against the defendant Nos.2,6 & 8 for partition of the entire joint family properties including the plaint schedule properties in O.S.No.8 of 2023 on the file of Additional Civil Judge (Senior Division), Chittoor which is pending for disposal. The primary contention of this defendant/petitioner is that the plaintiff in collusion with the other defendants is trying to lay foundation with the false statements. It is to be seen that while adopting the written statement of the deceased 2nd defendant certain additional averments were made in the written statement of the 7th defendant by way of defense appropriate to his character as legal representative of the deceased defendant.

As per the said provision when the legal representatives of the deceased defendant makes an application, the Court can make him a party to proceed with the suit and any person who is made as a party can make his defense appropriate to his character as legal representative of the deceased defendant. Hence, the above said provision enables the legal representative to come on record along with the written statement by putting forth his defense for participation in the suit proceedings.

7. Even as per the above said decision of the Hon'ble Apex Court when the petitioner was impleaded as a party-defendant, all right under Order 22 Rule 4(2) CPC and the defences available to the deceased defendant become available to him. It is not the case of the petitioner herein that he is impleading in the suit as a party defendant to set up his own independent right, title and interest to resist the claim of the plaintiff dehors the defense already taken by the deceased 2nd defendant in his written statement. That

apart Order 22 Rule 4 CPC enables the legal representative to proceed with the suit and as such imposing the restriction by the trial Court against the petitioner to participate at the stage of arguments only vide order dated 08.08.2024 is unreasonable, unjust and contrary to law. All the more, the contesting respondents herein did not challenge the order passed by the trial Court dated 08.08.2024 allowing the petitioner to file the additional written statement as the 7th defendant in the suit.

Since the suit is of the year 2002, both the parties shall cooperate with the trial Court for early disposal of the same, as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of this order.

8. For the foregoing reasons, this Civil Revision Petition is allowed removing the restriction on the petitioner "to participate in the suit proceedings at the stage of arguments only". There shall be no order as to costs.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

SD/- M.SRINIVAS

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the HON'BLE SRI. JUSTICE B. KRISHNA MOHAN

(for his Lordship's kind perusal)

To,

1. The Additional Civil Judge (Senior Division) Chittoor.
2. One CC to SRI. V V N NARASIMHAM Advocate [OPUC]

3. One CC to SRI.P. SAI SURYA TEJA, Advocate [OPUC]

4. One CC to SRI.A. VENKATA DURGA RAO, Advocate [OPUC]

5. One CC to SRI. MANNAVA JAGAN MOHAN RAO, Advocate [OPUC]

6. 9 L.R. Copies.

7. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi

8. The Secretary, Andhra Pradesh High Court Advocates' Association Library, High Court Buildings, Amaravarthi.

9. THREE CD COPIES

Chp

TAC

HIGH COURT

DATED:31/12/2024

ORDER

CRP.No.2142 of 2024

ALLOWING THE CIVIL REVISION PETITION