

*HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

+C.R.P.No.445 of 2015

% 24-4-2015

#Lingala Bhagya Laxmi and others .. Petitioners

Vs.

\$Lingala Prabhu Lingam and others .. Respondents

<GIST:

>HEAD NOTE:

!Counsel for petitioners : Mr. T. Venkat Raju Goud

^Counsel for respondents : --

Counsel for petitioners : Mr. T. Venkat Raju Goud

Counsel for respondents : --

The Court made the following :

ORDER:

This Civil Revision Petition arises out of order dated 22-12-2014 in I.A.No.1215 of 2014 in O.S.No.457 of 1997 on the file of the learned I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar.

Respondent Nos.1 to 6 have filed the above mentioned suit for partition of the suit schedule properties. Pending the suit, respondent Nos.4 and 5 have died. This case is concerned with the death of respondent No.5. It is not in dispute that respondent No.5 died as far back as the year 1999. More than 15 years later, the applicants who claimed to be the legal heirs of the deceased respondent No.5, filed I.A.No.1215 of 2014 under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short "the Code") for their impleadment as plaintiff Nos.7 to 10 in the suit in place of their deceased father. The said application was dismissed by the lower Court. Feeling aggrieved thereby, the unsuccessful applicants filed the present Revision Petition.

Under Order XXII Rule 3(1) of the Code where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. Under sub-rule (2) thereof, where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff. Under Rule 9(2) of Order XXII of the Code, the

plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set-aside the abatement or dismissal, and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit. Under Rule 9(3), the provisions of Section 5 of the Indian Limitation Act 1877 (15 of 1877) are made applicable for considering an application under sub-rule (2) of Order XXII of the Code.

Mr. T. Venkat Raju Goud, learned Counsel for the petitioners, submitted that mere quoting of a wrong provision of law shall not constitute a ground for dismissal of the application. This submission, in my opinion, is wholly misconceived. This is not a case of mere quoting of wrong provision of law, but it is one of failure of the petitioners to follow the procedure prescribed by the Code. Unless the petitioners get the abatement caused on account of the death of their father set-aside under Order XXII of the Code as discussed above, the abatement of the suit will continue qua plaintiff No.5 and they cannot seek to come on record in his place.

The learned Counsel has placed reliance on the Judgment of this Court in **Putta Obul Reddy Vs. Gunji Venkata Narasamma (died) and another**. A perusal of this decision shows that there is no similarity of facts between the two cases. In that case, initially an application filed under Order I Rule 10 of the Code filed by the plaintiff for impleading the legal representative of the defendant was dismissed on the ground that the same was not maintainable. However, a fresh application was filed under Order XXII Rule 4 of the Code for bringing on record the legal representative of the deceased defendant along with an application for condonation of delay of 729 days in filing the said petition. The said petition was dismissed by the lower Court. Interfering with the said order, this Court has made certain observations, which have no relevance in the present context. However, the fact remains that in that case also the party was made to follow the procedure prescribed under Order XXII Rule 4 of the

Code.

As could be seen from the above noted provisions, the Code has prescribed specific procedure for the legal representatives of a deceased plaintiff to come on record. Admittedly, the petitioners failed to follow this procedure. Instead, more than 15 years after the suit has abated qua plaintiff No.5, the petitioners have filed an application under Order I Rule 10 of the Code

For the above mentioned reasons, I do not find any jurisdictional error in the order of the lower Court. The Civil Revision Petition is accordingly dismissed.

As a sequel to the dismissal of the Civil Revision Petition, CRPMP No.564 of 2015 filed for interim relief is disposed of as infructuous.

Justice C.V. Nagarjuna Reddy

Date : 24-4-2015

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