

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF DECEMBER 2011

B E F O R E

THE HON'BLE MR.JUSTICE JAWAD RAHIM

C.R.P. NO. 243/2011

BETWEEN:

1. KENCHAPPA @ UGRAPPA
AGED 58 YEARS
AGRICULTURIST, R/O THAYAKKANAHALLY
VILLAGE, KUDLIGI TALUK
BELLARY DIST.583 135
2. K.G.SUSHEELAMMA
W/O H.THIPPESWAMY
AGED 39 YEARS, AGRICULTURIST
R/O DODDAULLARTI VILLAGE
CHALLAKERE TALUK, NOW
R/O KONDLAHALLI, MOLAKALMURU TALUK
CHITRADURGA DIST-577 535
3. SUVARNAMMA
W/O NAGENDRAPPA, AGED 35 YEARS
HOUSEHOLD WORK, R/O THAYAKKANAHALLY
VILLAGE, KUDLIGI TALUK
BELLARY DIST-583 135

... PETITIONERS

(BY SRI B.M.SIDDAPPA, ADV.)

AND:

MANJANNA @ MUKKANNA
S/O GOWRAIAH @ GOWRANNA
AGED 43 YEARS, PERSON OF DEAF,
DUMB AND UNSOUND MIND, NEXT
FRIEND BY T.JALANDRAPPA,

S/O THIPPAIAH @ PAGAPPA,
AGED 59 YEARS, AGRICULTURIST
R/O KONDLAHALLY, MULAKALMURU
CHITRADURGA DIST-577 535

... RESPONDENT

(BY SRI H.KANGHARAJA, ADV.)

CRP IS FILED UNDER SEC.115, CPC FILED AGAINST
THE ORDER DATED 29.6.2011 PASSED IN MISC.14/08 ON
THE FILE OF CIVIL JUDGE (SR.DN.) CHALLAKERE,
ALLOWING THE PETITION FILED BY THE PETITIONER
UNDER OR.41 RULE 19 R/W SEC. 151, CPC.

This petition coming on for admission this day, the
court made the following

ORDER

In this revision action under Section 115, C.P.C.,
petitioner has called in question the order dated 29.6.2011
in Misc. 14/08 allowing the petition filed under Order XLI
Rule 19, C.P.C. in favour of the respondent, a physically
challenged person.

2. Heard.

3. Perusal of the record reveals the following factual
matrix:

a) Respondent-Manjanna @ Mukkanna, a physically
challenged person had questioned the judgment and

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decree in O.S.49/00 dated 7.12.2006 in R.A.20/07. As he was physically challenged and not capable of pursuing legal action, he was represented in the appeal by his mother and natural guardian-Smt.Jayamma. However, she died during the pendency of the appeal.

b) Learned appellate judge posted R.A.20/07 to 6.3.2008 to take required steps. As by then Jayamma was dead and none represented the respondent (appellant in R.A.20/07), learned judge dismissed the appeal for default by order dated 6.3.2008.

c) After dismissal of the appeal, one T.Jalandarappa filed Misc. 14/08 invoking Order XLI Rule 19, C.P.C. to set aside the order dated 6.3.2008 dismissing the appeal, representing Manjanna @ Mukkanna.

d) The petition was contested by Kenchappa@ Ugrappa, Susheelamma and Suvarnamma who were respondents in R.A.20/07. Learned judge considering the circumstances in which the appeal was dismissed, accepted all grounds urged by the respondent herein and allowed

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Misc. 14/08 by the impugned order, and restored R.A.20/07 to file.

e) Assailing it, petitioners (respondents in R.A.20/07) have filed this revision.

4. Learned counsel for the petitioners reiterates the grounds urged before the trial court in Misc.14/08 and submits that there was default on the part of Manjanna @ Mukkanna, but the learned trial judge has unjustifiably given them concession. Respondent's counsel, on the other hand, supports the impugned order.

5. I had summoned the lower court records of Misc.14/08 as also R.A.20/07. A perusal of the records reveals R.A.20/07 was filed on behalf of Manjanna @ Mukkanna who is a person of unsound mind, by his mother and natural guardian-Smt.Jayamma. She died during the pendency of the appeal and thus Manjanna @ Mukkanna was unrepresented in the appeal. Learned appellate judge, ignoring this fact position, posted the appeal for taking steps to bring another guardian on record.

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5. It is material to note, when Manjanna @ Jukkanna (appellant in R.A.20/07) was represented by his guardian, Smt.Jayamma, upon her death, he could not have been expected to take further steps. Learned judge has ignored the provision of Rule 11 of Order XXXII, C.P.C. which deals with a situation like this. The provision reads thus:

11. Retirement, removal or death of guardian for the suit:

- (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.
- (2) Where the guardian for the suit retires, dies or is removed by the court during the pendency of the suit, the court shall appoint a new guardian in his place.

Thus, it is the duty of the court to appoint a new guardian in place of the guardian who retires or dies or is removed by the court. Had the learned judge noticed this requirement of law, the order dated 6.2.2008 would not have been passed, dismissing R.A.20/07 for not taking steps. The said order is the result of failure of the

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appellate court to exercise jurisdiction to pass order under Order XXXII Rule 11, C.P.C. and certainly it was not sustainable. It could have been questioned in revision but instead of doing so, on behalf of the respondent, T.Jalandarappa filed Misc.14/08 invoking Order XLI Rule 19, C.P.C., maintainability of which was questioned by the petitioners herein.

6. Since the facts recorded in paragraphs supra are not in dispute, it is desirable that I shall exercise the power of revision conferred on this court by Section 115, C.P.C. even to revise the order passed in R.A.20/07 dated 6.3.2008, rather than considering the legality or otherwise of the impugned order passed in Misc.14/08.

7. For the reasons discussed above, the impugned order passed in Misc.14/08 being just, needs no interference. It is confirmed. However, at the same time, as the order passed in R.A.20/07 dated 6.3.2008 itself is illegal, it is set aside.

J.S.

8. In the result, the revision is dismissed. The impugned order passed by the trial court is confirmed. Besides, the order dated 6.3.2008 passed in R.A.20/07 is set aside. The appeal is restored to file and after giving opportunity to T.Jalandarappa, the appellate judge shall pass appropriate orders under Order XXXII Rule 11, C.P.C. and appoint a guardian for the respondent-Manjanna @ Mukkanna (appellant in R.A.20/07).

**Sd/-
JUDGE**

vgh*