

HON'BLE SRI JUSTICE G. CHANDRAIAH

C.R.P. Nos. 1666 and 1873 of 2015

DATE: 31.08.2015

Between:

Thota Ramachandra Rao and
nine others

.. Petitioners

And

Kondapalli Somayya (died) and 19 others

.. Respondents

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COMMON ORDER :-

Inasmuch as the question of fact and law and the parties in the two Civil Revision Petitions are one and the same and the impugned orders have nexus with each other and arising out of the same suit, these matters are taken up together for disposal by this Common Order.

While C.R.P.No. 1666 of 2015 is directed against the order dated 21.03.2014 passed in I.A.No. 170 of 2009 in O.S.No. 16 of 1999, C.R.P.No. 1873 of 2015 is filed against the order dated 20.11.2013 passed in I.A.No. 176 of 2010 in I.A.No. 170 of 2009 in O.S.No. 16 of 1999 on the file of the Court of VI Additional District and Sessions Judge, Machilipatnam, Krishna District.

The brief facts of the case are that respondent Nos.1 to 10 herein who are plaintiffs, filed O.S.No. 16 of 1999 for recovery of possession of the suit schedule property situated in Chilakalapudi. Since the plaintiffs were called absent, the suit was dismissed for non-prosecution vide judgment dated 16.06.2009. Being aggrieved by this judgment, the plaintiffs filed I.A.No. 170 of 2009 seeking to condone the delay of 18 days in filing a petition to set aside the order of dismissal, and the learned District and

Sessions and Judge, by order dated 21.03.2014, allowed the same with costs. During the pendency of the suit, the 4th defendant died on 21.04.2010, as such, the plaintiffs filed I.A.No. 176 of 2010 under Order 22(4) and Section 15 C.P.C. seeking to implead legal representatives of the deceased - 4th defendant as defendant Nos.18 to 20 in the suit and the learned Sessions Judge allowed the petition by order dated 20.11.2013.

The learned counsel for the revision petitioners who are defendant Nos.1, 2, 4 to 6 and 8 to 12, has submitted that the petition filed by the plaintiffs in I.A.No. 601 of 2011 under Order-22 Rule-4 read with Section 151 CPC seeking to add legal representatives of the deceased-3rd defendant was dismissed on 21.03.2014, however the trial Court, without proper application of mind, erred in allowing I.A.No. 176 of 2010 permitting the plaintiffs to bring legal representatives of the deceased – 4th defendant on record particularly when the suit which was dismissed for default was not restored to file. It is further submitted that in spite of the fact that the plaintiffs have not assigned any reasonable grounds for non-prosecution of the matter, which amount to gross negligence, the trial Court, by order dated 21.03.2014, erred in allowing I.A.No. 170 of 2009 condoning the delay of 18 days, as such, there are legal infirmities in the impugned orders, and the same are liable to be set aside.

Heard the learned counsel for both the parties and perused the material placed on record.

The factual aspects are not in dispute. Even though the learned counsel for the petitioners has contended that the trial rightly held that the application in I.A.No. 601 of 2011 was dismissed as not maintainable only on the ground that the suit was not restored to file by the date of dismissal of the petition, it is to be noticed that the purport of the order in I.A.No. 601 of 2011 indicates the rights of the plaintiffs under Order-22, Rule-4 read with Section 151 CPC are not defeated as such, the trial Court gave liberty to the respondents to file fresh petition in the event of restoration of the suit enabling them to make necessary amendment in the plaint. Therefore, it can be safely inferred that the very purpose of filing the application when the suit is either on file or not seeking to implead legal representatives of the deceased

3rd defendant is not defeated. Further, it is to be taken note of that as observed by the learned trial Court, the petition in I.A.No. 176 of 2009 seeking to implead legal representatives i.e. the wife and two daughters of the deceased-4th defendant was filed well within 90 days which is the statutory period of limitation as contemplated under Order 22(4) and Section 151 CPC and the proposed parties are necessary for final adjudication of the suit, more so, as could be seen from the impugned

order in I.A.No. 176 of 2009, the 15th defendant, though denied certain allegations, has not raised any objection to impleading the legal representatives of the 4th defendant. Further, even if this application is dismissed, no prejudice would be caused to the plaintiffs because unless and until the suit is restored to file the purpose of granting the relief sought for would not give any effect to final adjudication of the suit, as such, no exception can be taken to the view taken by the trial Court. Thirdly, the reasons with which the trial Court allowed I.A.No. 170 of 2009 condoning the delay of 18 days in filing restoration petition are that even though there are as many as ten plaintiffs, the 4th plaintiff was representing on behalf of all the plaintiffs and prosecuting the case, however he could not be present on 16.06.2009 in view of the fact that he was held up in Hyderabad in connection with his cousin's marriage and more so when some of the advocates did not accept to take up the case because of involvement of several controvertial issues in the suit, as such, there are sufficient valid reasons for allowing the application particularly in view of the legal propositions laid down by the Apex Court as discussed in the order. Therefore, this Court is of the considered opinion that the impugned orders are bereft of any legal infirmities or any error of law warranting inference by this Court.

On the above analysis, these Civil Revision

Petitions merit no consideration, and are accordingly dismissed. However, having regard to the facts and circumstances of the case and in the light of the submissions made by the learned counsel for both the parties, it is left open to the respondents-plaintiffs to file a fresh application before the trial Court to bring legal representatives of the deceased -

3rd defendant on record, and in the event of such application being filed, the trial Court may consider and pass appropriate orders in accordance with law. No order as to costs.

As a sequel to the dismissal of this Revision Petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

31.08.2015

bcj