

(2013) 11 AP CK 0030

Andhra Pradesh High Court

Case No: C.R.P. No. 4557 of 2007

Ausali Siddiramulu (died per
L.R"s.) and Others

APPELLANT

Vs

Ausali Dubbaiah, (died per L.Rs.)
and Others

RESPONDENT

Date of Decision: Nov. 13, 2013

Citation: (2014) 1 ALD 550

Hon'ble Judges: M.S. Ramachandra Rao, J

Bench: Single Bench

Advocate: A. Rajamalla Reddy, for the Appellant; C.R. Pratap Reddy and Sri K. Goverdhan Reddy, for the Respondent

Final Decision: Allowed

Judgement

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M.S. Ramachandra Rao, J.

This Revision is filed challenging the order dt. 29.12.2005 in I.A. No. 493 of 2003 in O.S. No. 2 of 1984 on the file of the Court of the Sr. Civil Judge, Medak, Medak District. The petitioners are the legal representatives of one Siddiramulu, who was the plaintiff in the above suit. He filed the said suit for partition of the plaint schedule properties and for recovery of possession of his half share therein. Siddiramulu died pending suit and his wife and children were brought on record. A preliminary decree of partition was passed in the suit on 28.09.1984.

2. Challenging the said decree, Respondent Nos. 1 to 6 herein filed A.S. No. 25 of 1984 before the District Judge, Medak. The said appeal was dismissed on 13.11.1987.

3. The 3rd respondent herein filed S.A. No. 174 of 1998 in this Court challenging the same. On 18.09.2000 the said Second Appeal was also dismissed.

4. It appears that one Reddi Lachaiah, who is the 4th respondent/4th defendant in the suit, died in the year 2001 leaving behind respondent Nos. 17 and 18 as his legal heirs. Likewise, Raja Timmaiah, the 5th respondent/5th defendant also died in 1999 leaving behind the 16th respondent as his legal heir. The 6th respondent/6th defendant in the suit, also died leaving behind the 14th respondent as his legal heir.

5. The petitioners filed I.A. 493/2003 under Order XX Rule 18 CPC on 07.08.2003 for appointment of a Commissioner for submitting a report so that a final decree can be passed in the suit. Since the respondent Nos. 4-6 had died and their legal representatives would also have to be given notice in the final decree petition I.A. 493/2003, they also sought for condonation of delay of 1053 days in bringing their legal representatives on record, to set aside the abatement caused by their death and to bring them on record as legal representatives of the deceased respondent Nos. 4-6/defendant Nos. 4-6. In the array of parties, all the legal representatives of respondents 4-6 were also indicated.

6. The 3rd respondent filed a counter opposing the said application contending that the application is vague and vexatious and there is no specific prayer in the petition; that specific dates of the death of the deceased were not given; that the petitioners ought to explain the delay in respect of the each of the deceased; they also ought to file separate petitions in respect of each of the respondent Nos. 4-6, for condonation of delay in seeking to set aside abatement, to set aside abatement and to bring on record the legal representatives. It is also stated that pending Second Appeal before the High Court, the death of these persons was not reported, and therefore, the 3rd respondent could not take steps to bring them on record in the Second Appeal which she had filed.

7. By order dt. 29.12.2005, the Court below dismissed the said I.A. In the said order, the trial court noted that the petitioner did not add the legal representatives of the deceased in S.A. No. 174 of 1998 which had been disposed of on 18.09.2000; that the petitioners did not give even the date of the deaths of the deceased respondents; the delay is not properly explained; and there were latches on the part of the petitioners.

8. Aggrieved thereby, the present Revision is filed.

9. Heard the counsel for petitioners and the counsel for 3rd respondent.

10. Respondent Nos. 1, 2, 4 to 6 have died. Respondent Nos. 7, 11 and 14 refused to receive the notices sent by Court and therefore, they are deemed to be served. Respondent Nos. 8 to 10 and 17 were served but none appears on their behalf.

11. The counsel for the petitioners contended that the reasoning of the Trial Court is perverse; when S.A. No. 174 of 1998 was filed in this court by 3rd respondent/3rd defendant, the trial court ought not have blamed the petitioners for not bringing to the notice of this Court, the death of these persons or for not bringing their legal

representatives on record in the Second Appeal; that under Order XXII Rule 10A of CPC, it was incumbent on the counsel who appeared for the deceased parties in the suit to give information about the date of death and the details of legal representatives of the deceased defendants to the petitioners; that the petitioners were not aware of these details and therefore, they could not mention the specific dates of death of these individuals. It is also stated that since there is no time limit to file an application to pass a final decree in a suit for partition, in the application filed to pass a final decree, the petitioners are entitled to state that these persons have died and their legal representatives be brought on record by condoning the delay, if any, in filing applications to set aside the abatement. He also contended that all procedure is a hand-maid of justice and the mere fact that separate applications in respect of each of the deceased respondents are not filed, it is not open to the trial court to dismiss the application for passing final decree under Order XX Rule 18 CPC.

12. On the other hand, the counsel for 3rd respondent supported the decision of the trial court. He contended that without the dates of death of the deceased respondents being mentioned, the I.A. 493/2003 cannot be entertained.

13. I have noted the submissions of the parties.

14. It is not disputed that the S.A. No. 174 of 1998 is filed by 3rd respondent in this Court and it was dismissed on 18.09.2000. When the 3rd respondent/3rd defendant had filed S.A. No. 174 of 1998 in this Court, and the petitioners had not filed it, the trial court cannot blame the petitioners for not taking steps to bring on record the legal representatives of the deceased respondents in that Second Appeal.

15. The Court below also mentioned that the dates of death of the deceased were not given by the petitioners. When parties to a suit die, under Order XXII Rule 10A of CPC, it is incumbent on the counsel appearing for that party to furnish details of the date of death and the details of the legal representatives along with their addresses to the plaintiff in the suit (See [Gangadhar and Another Vs. Raj Kumar](#), Admittedly, this has not been done. When none of the respondents furnished the date of death to the petitioners, to expect the petitioners to give the exact date of death of the respondent Nos. 4, 5 and 6 is perverse. A party cannot be compelled to give information which he did not know. So this finding of the trial court also cannot be sustained.

16. Once a preliminary decree is passed, the shares of the parties to the suit are determined. What remains to be done is the division of property by metes and bounds. As per law, admittedly, there is no time limit fixed for filing an application to pass a final decree in a suit for partition (See [Shub Karan Bubna @ Shub Karan Prasad Bubna Vs. Sita Saran Bubna and Others](#), Therefore, the mere fact that the application for final decree is filed in 2003 cannot be held against the petitioners.

17. It is pertinent to note that the death of the above parties occurred after the passing of the preliminary decree. The question is whether there is any abatement of the suit on account of death of a party to the suit after passing of the preliminary decree but before passing of final decree.

18. This Court in S. Mohan Reddy Vs. P. Chinnaswamy and Others, held:

3. It is well-established proposition of law that a suit cannot be dismissed on ground of abatement after a preliminary decree was passed for thereby rights are accrued to one party and liabilities are incurred by the other : vide AIR 1924 198 (Privy Council) . It was observed therein:

"After a decree has once been made in a suit, the suit cannot be dismissed unless the decree is reversed on appeal. The parties have on the making of the decree acquired rights or incurred liabilities which are fixed unless or until the decree is varied or set aside."

After a decree, any party can apply to have it enforced. As such, the suit does not abate under Or. 22 Rules 1, 3 and 4 CPC after a preliminary decree is passed. But, it is equally a general principle of law that a decree cannot be passed in favour of or against a dead person.

.....

6. As I already observed, a suit cannot be dismissed except on appeal or by review after a preliminary decree is passed. It follows that there cannot be abatement of the suit even if the L.Rs. of the deceased party are not brought on record during the final decree proceedings. But, even a final decree cannot be passed for or against a dead person. So, it is necessary to bring on record the L.Rs. of the deceased before a final decree is passed. It has to be seen as to what provision is applicable when O.22 Rules 1, 3 and 4 are not applicable in case of death of parties during the final decree proceedings.

7. Order 22 Rule 10 CPC lays down that in cases of an assignment, creation or devolution of any interest other than the cases referred to in remaining Rules of or. 22, the suit may by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. When Or. 22 Rules 3 or 4 is not applicable in cases of death during the final decree proceedings, one has to invoke Or. 22 Rule 10 CPC to bring the L.Rs. on record. Ramsewak Mishra and Another Vs. Mt. Deorati Kuer and Others, lends support to the said proposition.

(emphasis supplied)

19. In T. Mangaraju v. K. Ganamma 1979 (1) APLJ 54 (NRC), this Court held:

Once preliminary decree is passed it cannot be said that the cause of action dies along with the person nor dies it require that the LRs. should claim the cause of action by being brought on record within the period of limitation prescribed. In

other words on account of the passing of the preliminary decree the right stands recognised by the Court. All that is required is that the final decree proceedings should be taken up at the instance of the party claiming and in that view there is no question of any abatement nor does it require that the abatement be set aside. The provision of Order 22 Rule 3 and 4 does not apply to a case where the holders dies after passing a preliminary decree.

(emphasis supplied)

20. In [Valluri Sambasiva Rao and Another Vs. Motamarri Veeraiah Gupta \(died\) by LRs.,](#) 5, this Court reiterated:

22. it is clear that by passing of preliminary decree, the rights of the parties stand recognized and determined by the Court and the only thing that is left is passing of the final decree. Therefore after passing of a preliminary decree if the plaintiff dies, since no final decree can be passed on a dead person, it is essential to permit his legal representatives to come on record. Hence, after such determination and recognition of rights, if the plaintiff dies, there is no question of any abatement and the suit cannot be dismissed on the ground of abatement, after passing of a preliminary decree, except in an appeal or in a revision.

(emphasis supplied)

21. In view of the above legal position, I am of the opinion that Order XXII Rule 3 and 4 have no application to the present case as preliminary decree in the suit was passed in 1984 and the death of respondent Nos. 4, 5 and 6 took place subsequently in 1997, 1999 and 2001, respectively. Thus there can be no abatement of the suit on account of the death of the defendants 4-6 after passing of the preliminary decree. So there was no necessity for the petitioners to file petitions for condonation of delay in seeking to set aside abatement and to set aside abatement. So the order of the court below holding that they should have filed such applications and explained day to day delay in respect of each of the deceased defendants is contrary to law and unsustainable.

22. The purpose of filing a final decree petition is to ensure that a Commissioner is appointed to divide the property by metes and bounds and to determine profits, if any, awarded in the preliminary decree. The petitioners intended that all the affected parties be informed of the final decree proceedings so that they may not suffer and the final decree is not passed behind their back. Admittedly, all the legal representatives of the deceased respondents 4-6 were shown as respondents in the final decree petition I.A. No. 493 of 2003. In my opinion, it would merely suffice if they impleaded the legal representatives of the deceased respondents 4-6 in it, which they did. No exception can be taken to this.

23. It is most unfortunate that the trial court ignored the settled legal position and dismissed the I.A. 493/2003 for passing final decree on untenable grounds and in a

perverse manner. Such orders are likely to cause the parties to lose faith in the institution of Judiciary itself.

24. Even the conduct of the 3rd respondent is to be deprecated. Admittedly she is not the legal heir of any of the deceased respondents and is not prejudiced in any manner, if the petitions for condonation of delay in filing the applications to set aside abatement and to set aside the abatement (assuming for the sake of argument that as per law they should be filed), are not filed by petitioners. By raising these untenable technical pleas she has managed to enjoy the plaint schedule properties from 1984 till this day.

25. Therefore, the impugned order dt. 29.12.2005 in I.A. No. 493 of 2003 in O.S. No. 02 of 1984 passed by the Court of Senior Civil Judge, Medak, Medak District is set aside. I.A. No. 493 of 2003 is restored to the file of the Sr. Civil Judge, Medak. The said court shall issue notices to all the respondents and take steps to do the needful to pass a final decree in the suit. The Civil Revision Petition No. 4557 of 2007 is allowed with costs of Rs. 5000/- to be paid by 3rd respondent to petitioners. Miscellaneous applications pending, if any, shall stand closed.