

(2004) 07 AP CK 0015

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 2650 of 2004

Gunnam Venkateswara Rao

APPELLANT

Vs

Vetcha Vanaja Kumari and
Others

RESPONDENT

Date of Decision: July 1, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 22 Rule 3, 141

Citation: (2004) 4 ALD 786

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: Yellapragada Srinivasa Murthy, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

This civil revision petition is filed against the order dated 16.2.2004 passed by the learned I Additional Junior Civil Judge, Kakinada in I.A. No. 674 of 2003.

2. One Grandhi Ammanna filed O.S. No. 1135 of 1999 against the petitioner herein for recovery of certain amount, on the strength of a promissory note. During pendency of the suit, the sole plaintiff died on 8.2.2001. His wife pre-deceased him. He had three sons and three daughters. Alleging that the deceased plaintiff executed a Will dated 5.9.2000 in her favour, enabling her to pursue the suit claim and get the benefit out of it, one of his daughters viz. Vetcha Vanaja Kumari, the first respondent, filed I.A. No. 847 of 2001 under Order XXII Rule 3 C.P.C. to come on record as legal representative of the deceased plaintiff. This application was resisted by the petitioner herein on the ground that when the deceased plaintiff has left behind him the three sons and three daughters, the application filed by only one of the daughters is incompetent. In view of this development, Vanaja Kumari filed I.A.

No. 674 of 2003 to implead her three brothers and two sisters as respondents 2 to 5 in I.A. No. 847 of 2001. This application was resisted by the petitioner. Through the order under revision, the trial Court allowed the I.A.

3. Sri Y. Srinivasa Murthy, learned counsel for the petitioner, submits that when the application filed under order XXII Rule 3 C.P.C. is pending, another application filed under order I Rule 10 is not maintainable. He submits that such a course of action would enable the parties to circumvent the various factors, which are relevant in deciding the application under Order XXII Rule 3 C.P.C.

4. On the death of the sole plaintiff in O.S. No. 1135 of 1999, one of his daughters filed an application under Order XXII Rule 3 C.P.C. proposing to come on record as legal representative, on the strength of a Will dated 5.9.2000 said to have been executed by the plaintiff. The brothers and sisters of the applicant in I.A. No. 847 of 2001 did not raise any objection. The petitioner herein objected to I.A. No. 847 of 2001 on the ground that other children of the deceased plaintiff ought to have figured in it. It was in this context, the first respondent filed I.A. No. 674 of 2003 to implead her brothers and sisters in I.A. No. 847 of 2001.

5. The petitioner pleaded before the trial Court as well as this Court as though I.A. No. 847 of 2001 and I.A. No. 674 of 2003 overlap with each other. According to him, the filing of I.A. No. 674 of 2003 is chosen as a subterfuge to become parties to the suit through back door. The record discloses that this assumption is not correct. The effect of order under revision is that the scope of adjudication in I.A. No. 847 of 2001 would be widened and the views of other sons and daughters of the deceased plaintiff vis-à-vis the claim of the first respondent would be known. The order under revision by itself did not result in making either the petitioner or the respondents in I.A. No. 674 of 2003 as parties to the suit. The question as to whether the first respondent alone or her other brothers and sisters ought to be brought on record as legal representatives of the deceased plaintiff would be decided in I.A. No. 847 of 2001. One of the contentions raised on behalf of the petitioner is that provisions of Order I Rule 10 C.P.C. are applicable only to suits and they cannot be extended to miscellaneous applications. In this context, it needs to be observed that u/s 141 C.P.C., the procedure provided in relation to suits shall be made applicable to all other proceedings also. Hence, the objection cannot be sustained.

6. Learned counsel for the petitioner submits that in the event of respondents 2 to 5 being held to be legal representatives, their claim stands barred by limitation. It is too premature, at this stage, to enter the realm of any speculation. Left to themselves, respondents 2 to 5 did not want to come on record. In case, they put forward a contention that they too are entitled to come on record as legal representatives of the deceased plaintiff, the petitioner can certainly raise an objection. Even in such a case, it is not as if respondents 2 to 5 are without any remedy. Law provides for filing of application for condonation of delay in setting aside the abatement and for other ancillary circumstances. Viewed from any angle,

this Court does not find any basis to interfere with the order under revision.

7. The civil revision petition is accordingly dismissed.