

(2010) 07 MAD CK 0364

Madras High Court

Case No: C.R.P. (PD) No. 3308 of 2009 and M.P. No. 1 of 2009

The Executive Officer,
Arulmighu Mariamman
Thirukoil, Udumalpet

APPELLANT

Vs

The Special Tahsidar
(Adi Dravidar Welfare),
Pollachi-2 and Others

RESPONDENT

Date of Decision: July 8, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 4A
- Land Acquisition Act, 1894 - Section 18

Citation: (2011) 6 CTC 391

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: R.G. Narendhiran, for the Appellant; Shanthi Rakkappan, Government Advocate for Respondent Nos. 1 and 3 and AR.L. Sundaresan, for AL. Ganthimathi for Respondents Nos. 4, 6 to 8 and 11, for the Respondent

Final Decision: Dismissed

Judgement

G. Rajasuria, J.

Inveighing the order dated 2.7.2009 in I.A. No.59 of 2009 in LAOP No.62 of 1998 passed by the learned Subordinate Judge, Udumalpet, this Civil Revision Petition is focussed.

2. Heard the learned Counsel for the Petitioner, the learned Government Advocate appearing for Respondents 1 & 13 and the learned Counsel appearing for the other Respondents.

3. A "resume" of facts absolutely necessary and germane for the disposal of this Civil Revision Petition would run thus:

The First Respondent/The Special Tahsildar (ADW), Pollachi referred the matter u/s 18 of the Land Acquisition Act to the Court for adjudicating the claims made by the persons for enhancement of the compensation. During the pendency of the proceedings one of the Claimants died. But the Land Acquisition Officer did not take any steps to get the legal heirs of the deceased Claimant impleaded. Whereupon, the Court closed the LAOP. Thereafter, the Revision Petitioner herein, who also happened to be one of the Claimants filed I.A. No.59 of 2009 for re-opening the matter and to proceed with the claim. However, the lower Court passed the following order:

2.7.2009 - This Petition is filed by one of the Claimant to the reference to restore the Land Acquisition Original Petition which was closed on 13.11.2008. The reference was made by the Government for apportionment of the claim. Since some of the Respondent/Claimants are reported, the Court adjourned the case so many times. In spite of giving extension of time, the Government did not take any steps by impleading the necessary Lrs. Both sides are not at all interested to conduct the case sincerely. The case was already dismissed in the year 2004 and restored in the year 2008. So there is no purpose in restoring the LAOP on the Application of one of the Claimant. The Government alone must take necessary steps to restore this Petition by impleading necessary LRs. Hence, this Petition is dismissed.

Sd/-

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4. Being aggrieved by and dissatisfied with the same, this Revision has been filed on various grounds, the gist and kernel of them would run thus:

The lower Court was not justified in dismissing the I.A. on the ground cited therein and accordingly, the learned Counsel for the Petitioner/13th Respondent prays for setting aside the order of the lower Court for allowing the said Application and direct the lower Court to take up the matter and deal with it as per law.

5. The point for consideration is as to whether the order of the lower Court suffers from any illegality or impropriety ?

6. No doubt, it appears that one of the Claimants died and the legal heirs were not brought on record. The core question arises, in such circumstances, as to what the Court should have done ?

7. I recollect and call up the decision of mine dated 29.7.2008 in S.K. Anwerjan v. C. Leelavaihi and others, A.S. No. 359 of 1993 and certain excerpts from it would run thus:

10... (i) Bangali Singh and another v. Ramanuj Sharma, 2001 (4) C.L.J. 209 -An excerpt from the decision would run thus:

5.....In this connection I am to refer to Order 22, Rule 4-A, CPC, where it has been laid down that if, in any Suit it shall appear to the Court that there is no legal representative of the party who died during the pendency of the Suit, the Court may on the Application of any party to the Suit proceed in absence of a person representing the state of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court of such other person as it thinks fit to represent the estate of the deceased person or order subsequently given or made in the Suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the Suit. This Rule was added by amending Act 104 of 1976. The aforesaid provisions makes it abundantly clear that a Suit may be allowed to proceed even in the absence of the deceased Plaintiff or Defendant by a person who is appointed by the Court to represent the estate of the deceased Plaintiff or Defendant and the suit may be continued by that person and a judgment and decree may be passed. This judgment and decree will bind the estate of the deceased. That means the estate of the deceased will be protected by the judgment and decree passed by the Court. So, the spirit behind substitution is that interest of the original Plaintiff or Defendant who dies during the pendency of the Suit and who is to be represented by the substituted Plaintiff may be protected. This is the inherent spirit behind substitution. So, when the original Plaintiff Daro Kuer, had filed a Suit seeking setting aside of the alleged deed of gift executed by her in favour of the Defendant of the Suit, the legal representative whoever may be shall be entitled to continue the Suit and protect the interest of the original Plaintiff. If the Suit is allowed to abate, the interest of the original Plaintiff shall become extinct and the Defendants of the Suit shall be holding the Suit land under illegal right. Normally when estate of any person is without any heir the property goes to the State by escheat but when Suit abates and the Defendant of a particular Suit is allowed to hold the suit land illegally even the State cannot take the property of the deceased Plaintiff by escheat. So, guiding principle behind substitution as mentioned in the amending Rule 4-A, Order 22, C.P.C. is that the Suit must be allowed to be continued by a legal representative in order to protect the interest of the original Plaintiff and to protect the interest of the original Plaintiff and to protect his or her estate from being usurped by unauthorised person. So, I do not think that the decree passed by the Trial Court was bad or the decree confirmed by the Appellate Court was also vitiated by any illegality. The decree passed in the instant Suit would, therefore, be a decree in favour of the original Plaintiff-Daro Kuer and not in favour of the substituted Plaintiff. Now I shall herein below consider when Ramanuj Sharma acquired any right being the legal representative of Daro Kuer by virtue of the decree passed by the lower Courts. In this Connection I am to refer to a decision cited by the Defendant's Lawyer as in [Geevarghese Geevarghese and Another Vs. Issahak George and Others,](#)

6.....However, if it was declared by the Court by its decree that right of the Plaintiff remained unaffected that may amount to the declaration that the substituted Plaintiff-Ramanuj Sharma had also acquired title to the suit property. In this connection, I am of the opinion that of course, the decree in the present form might indicate that the

right of the substituted Plaintiff in the Suit land remanded unaffected. However, of course the substituted Plaintiff would derive no title, right and any interest in the Suit land by virtue of the unprobated Will although he might act as legal representative to continue the Suit. So, it is made clear here and it is observed that the substituted Plaintiff Ramanuj Sharma shall derive no right, title and any interest over the suit property by seeking the cancellation of the Deed of Gift, as decree by the two lower Courts. It is the original Plaintiff whose right and title of the suit property shall remain unaffected by the decree granted by the two lower Courts.

12. A perusal of the said judgment would highlight the fact that an unprobated Will cannot be presumed to service for any purpose before the Court to derive any title by the newly added Respondents, who could only on behalf of the deceased participate in the proceedings. But for their presence, the Court should proceed in any of the other modes contemplated under Order 22, Rule 4-A.

13. At this juncture, it is just and necessary to extract here under Order 22, Rule 4-A, C.P.C:

Order 22, Rule 4-A. Procedure where there is no legal representative -- If in any Suit, it shall appear to the Court that any party who has died during the pendency of the Suit has no legal representative the Court may, on the Application of any party to the Suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the Suit and any judgment or order subsequently given or made in the Suit shall bind the estate of the deceased person to the same extent as he would have been bound if a person had been a party to the Suit.

14. A perusal of the above would indicate the relevant procedure to be adopted in the event of no one could be located for representing the interest of the deceased.

15. Here, in this case, since the learned Counsel, who appeared on behalf of the deceased filed the Memo, highlighting the said newly added three Respondents as executors of the Will, the Court is justified in citing them in the party array. As such, I am in complete agreement with the view expressed by the Patna High Court in the judgement reported in Bangali Singh and another v. Ramanuj Sharma, 2001 (4) CLJ 209 , cited supra.

16. An excerpt from one other decision cited by the learned Senior Counsel for the Plaintiff reported in "Gulabben Wd/O Chimanlal Maniar & Others v. Narendra Balchandra and Others, 2001 103 (Bom.) L.R. 540, would run thus:

7..... On plain language of this provision it would appear that any party to the Suit could have taken recourse to this Rule, nay was duty-bound to do so. While doing so, it was enough for the Plaintiffs to assert that deceased Defendant No. 1 had not left behind any

heir or legal representative to represent his estate so as to invoke this rule. The application filed by the Petitioners does make this assertion. Moreover the evidence let in during trial would also fortify this position, as contended by the Petitioners. But the Court below has erroneously recorded that there is nothing before the Court that no heir and legal representative were left by Defendant No. 1 after her death. This finding is therefore, rightly criticized by the learned Counsel for the Petitioners being an error apparent on the face of the record. I find substance in the said submission. In other words, the Court below has applied wrong test while deciding the Application in question. Once this finding is reversed, as a necessary corollary, it would follow that the Trial Court will have to re-examine the matter in the context of scope of Rule 4-A, coupled with procedural requirement under sub-rule (2) of Rule 4-A. While doing so, the Court below shall also bear in mind the effect of sub-rule (4) of Rule 4, which postulates that the Court whenever it thinks fit may exempt the Plaintiff from the necessity of substituting the legal representatives of any such Defendant who has failed to file Written Statement or who, having filed it, has failed to appear and contest the Suit at the hearing; and judgment may, in such a case, be pronounced against the said Defendant notwithstanding the death of such Defendant and shall have the same force and effect as before the death took place. It is not in dispute that the deceased Defendant No. 1 had not filed Written Statement in the Suit, therefore, in terms of Rule 4(4), the Plaintiffs were additionally entitled to claim that they could be exempted from the necessity of substituting the legal representatives, in which case the order of abatement of Suit as against such Defendant was unwarranted and impertinent.

9. In the circumstances the only appropriate order that could be passed is to remit the matter to the Trial Court to re-examine the application in the context of requirements of sub-rule (4) of Rule 4 as well as Rule 4-A, of Order 22 of the Code of Civil Procedure.

10. The Argument advanced on behalf of the Respondents that the Petitioners-Plaintiffs had failed to move for setting aside the order passed on 16.9.1992 is of no avail. In my view, the Application in question, as is evident from the assertion made therein was taken out only after evidence was let in before the Trial Court and which would go to show that the deceased Defendant No. 1 has not left behind any heir or legal representative. In the changed situation the said Application was filed by the Plaintiffs and therefore, it would be wholly inappropriate to non-suit the Plaintiffs on the ground that no steps have been taken for setting aside the order dated 16.9.1992. In my view, the observations made by the Trial Court in its order dated 30.8.1995 will have to be understood in the context of fact situation which has come on record. Needless to mention that the order of abatement is not so sacrosanct or inviolable that the same cannot be altered at a subsequent point of time in spite of sufficient cause being shown by the Plaintiffs or any other party to the Suit. If the party to the Suit is able to satisfy the Court that the requirements of Rule 4-A or Rule 4(4), are attracted in a given case then the Court may in its inherent powers pass appropriate orders including an order of setting aside abatement on such ground. If the aforesaid rules permit prosecution of the Suit in absence of legal representatives of the

deceased party, and yet the judgment passed would bind the estate of such deceased party, then surely it would be preposterous to contend that Suit against such a person would abate law. Both these situations would be antithesis to each other. In my view it would defeat the legislative intent behind the Amendment Act of 1976.

17. As such, the said decision also would highlight the same proposition as posited supra. Hence, I am of the considered opinion that trite the proposition of law is that unprobated Will relating to the property situated in Chennai city, cannot be looked into for any purpose. However, those newly added parties are only allowed to proceed with the Appeal, for the purpose of comprehensively deciding finally the issues involved in this case and I make it clear that they cannot derive any personal benefit over the suit property.

As such, adhering to the above said judgment, the lower Court should have acted further. But it has not chosen to do so. In the LAOP, the Land Acquisition Officer failed to perform his duty; he ought to have taken steps to get impleaded the legal heirs of the deceased Claimant in it. The Court cannot shirk its responsibility and simply close the matter and that too to the detriment of the other Claimants. In such circumstances, when there is an impasse, the law comes to the rescue. But the lower Court without adhering to Order 22, Rule 4-A of CPC simply dismissed that Application, warranting interference by this Court.

8. In view of the above, the order dated 2.7.2009 is set aside and the I.A. No.59 of 2009 is allowed and consequently, the LAOP shall stand reopened. The lower Court is expected to adhere to the procedure as contemplated under Order 22, Rule 4-A of CPC, as stood explained and clarified in the judgment cited supra. The lower Court shall see to it that the matter is processed as expeditiously as possible, preferably within three months from the dated of receipt of a copy of this order.

9. With the above direction, the Civil Revision Petition is disposed of No costs. Consequently, the connected Miscellaneous Petition is closed.