

---

**(2005) 07 MAD CK 0095**

**In the Madras High Court**

**Case No :** Civil Revision Petition (NPD) No. 546 of 2003

Ammu Ammal and Others

APPELLANT

Vs

K.R. Andu Gowder, R. Seeni Lakshmi and Drowpathi

RESPONDENT

---

**Date of Decision :** 25-07-2005

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151

Evidence Act, 1872 — Section 68

Succession Act, 1925 — Section 57

**Citation :** (2005) 07 MAD CK 0095

**Hon'ble Judges :** S. Sardar Zackria Hussain, J

**Bench :** Single Bench

**Advocate :** AR. L. Sundaresan, for the Appellant; P.R. Balasubramanian, for M.P. Thangavelu, for R1, R2 and R3, for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

S. Sardar Zackria Hussain, J.—The revision petitioners are the petitioners 4 to 8 in I.A.No.63 of 2003 and proposed respondents 4 to 8 in A.S.No.29 of 2000 on the file of the District Court, Nilgiris. The petition I.A.No.63 of 2003 was filed claiming that they are the legal representatives of K.R.Raju, the deceased sole respondent in the appeal A.S.No.29 of 2000. The revision is directed against the dismissal of I.A.No.63 of 2003 as per order dated 26.2.2003, which was filed under Order I Rule 10(2) C.P.C. to implead the revision petitioners as respondents 4 to 8 in the appeal A.S.No.29 of 2003.

2. The first respondent as plaintiff filed the suit O.S.No.155 of 1996 on the file of the Sub Court, Udthagamandalam against his brother K.R.Raju, Ex.M.L.A. for partition of his half share in the suit property in Kotagiri village, Nilgiris District and the suit after contest was dismissed and the first respondent herein filed the appeal A.S.No.29 of 2000 before the District Court, Nilgiris. During the pendency of the appeal, since the sole respondent K.R.Raju died, the revision petitioners herein along with respondents 2 and 3, their mother and sister filed I.A.No.63 of

2003 under Order I Rule 10(2) C.P.C. to implead them as parties in the appeal claiming that they are step mother, step brothers and step sisters, that the sole respondent K.R.Raju in the appeal died intestate on 24.3.2002 at Ketti village leaving unregistered Will dated 12.2.2002, bequeathing all his movable and immovable properties to them and that they are necessary parties to the appeal.

3. The petition I.A.No.63 of 2003 was resisted in the counter that the petition already filed under Order 22, Rule 4 and Section 151 C.P.C. by the said petitioners was not proceeded further and the present petition is hit by the Doctrine of lis pendens. The petition was also resisted that having failed in their attempt to declare them as legal representatives of the deceased K.R.Raju before Revenue Authorities, the petition I.A.No.63 of 2003 was filed. The alleged Will is a fabricated and forged one and the petitioners cannot derive any interest through that Will. The petitioners are not necessary parties.

4. The first appellate Court dismissed the petition I.A.No.63 of 2003 that since the unregistered Will dated 12.2.2002 of the sole respondent K.R.Raju in the appeal is not probated, the claim made by the petitioners in the said petition that they are the legal representatives of the sole respondent in the appeal cannot be allowed and ultimately dismissed the petition. Challenging that order, this revision is filed.

5. Heard the learned counsel for the revision petitioners and the learned counsel for the first respondent.

6. The learned counsel for the revision petitioners argued that inasmuch as the revision petitioners claimed that the sole respondent in appeal A.S.No.29 of 2000 died intestate on 24.3.2002 leaving unregistered Will dated 12.2.2002 bequeathing all his movable and immovable properties, they have right in the suit properties and as such, they have to be impleaded as parties in the appeal A.S.No.29 of 2000. The learned counsel further submitted that though the petition filed under Order I Rule 10 C.P.C. to implead the revision petitioners as parties on the death of the sole respondent in the appeal, inasmuch as they are legal representatives of the deceased K.R.Raju, by merely wrong quoting of provision of law, it cannot be said that they are not entitled for the relief sought. It is further argued by the learned counsel that the Will being the mofussil Will, the same need not be probated. The learned counsel also argued that it is enough if the Will is proved by examining one attesting witness as per Section 68 of the Evidence Act and that stage will arise only after the revision petitioners are added as parties as legal representatives of the deceased sole respondent in the appeal within the meaning of Section 211(1) of Indian Succession Act, 1925 as per which the executor or administrator, as the case may be, of a deceased person is his legal representative for all purpose, and all the property of the deceased person vests in him as such. The learned counsel further vehemently contended that as per Section 57 of the Indian Succession Act no probate is necessary to set up a claim regarding property, movable or immovable, on the basis of a Will and further contended that absence of probate will not debar the

legates from claiming his right on the basis of a Will which does not fall within the ambit of clauses (a) and (b) of Section 57. In support of the contention that mere quoting of wrong provision of law, application cannot be dismissed, the learned counsel for the revision petitioners relied on the following decisions:-

- (1) M/s. Oil and Natural Gas Corporation, Cauvery Project, Group General Manager (C) Karaikal Vs. M. Gouthamchand Gothi, ,
- (2) Samuel,J. - v. - S.Mathisa Pandian and 2 others reported in 1998 2 LW 144
- (3) Vasantha Ammal and others Vs. Narasimha Naidu, and
- (4) M.P.M. Hameed Ibrahim and one another Vs. V.S. Bagirathan and others, .

7. The learned counsel for the first respondent/plaintiff vehemently contended that inasmuch as the unregistered Will dated 12.2.2002 has not been probated, on the strength of the said Will, the petitioners in I.A.No.63 of 2003 cannot claim that they are the legal representatives of the deceased sole respondent in the appeal as held in the decision in C.G.Rajendran - v. - M.Senthilkumar reported in 2003 1 LW 43 wherein this Court (A.S.VENKATACHALAMOORTHY,J. as he then was) has held, following the judgment of this Court in Ganshamdoss Narayandoss Vs. Gulab Bi Bai, that the unprobated Will could be used for collateral purpose, but not in order to establish the right under the unprobated Will.

8. The revision petitioners and the respondents 2 and 3 filed I.A.No.63 of 2003 being step mother, step brothers and step sisters claiming that they are the legal representatives of the deceased sole respondent K.R. Raju in the appeal. It is the definite case of the revision petitioners that they have right in the suit properties, in view of the fact that K.R. Raju, Ex. M.L.A., the sole respondent in the appeal, died on 24.3.2002 intestate leaving the unregistered Will dated 12.2.2002. It appears, the revision petitioners filed petition under Order 22 Rule 4 and Section 151 C.P.C. to implead them as legal representatives of the deceased sole respondent in the appeal. But they have not proceeded further, in that, they are step mother, step brothers and step sisters. Further, it is the case of the revision petitioners that as per the said unregistered Will, the sole respondent in the appeal bequeathed all his movable and immovable properties to the revision petitioners and therefore, they claim right in the movable and immovable properties of the deceased sole respondent in the appeal as per the said Will.

9. The claim of the revision petitioners that they are the legal representatives of the deceased sole respondent K.R. Raju in the appeal before the first appellate Court is unacceptable in view of the fact they are not persons in law to represent the estate of the deceased K.R. Raju and also not persons to intermeddles with the estate of the deceased and the property also not devolved on the death of the deceased sole respondent K.R. Raju. Therefore, the case is to be considered only with reference to Section 211(1) of the Indian Succession Act being the beneficiaries under the unprobated Will dated 12.2.2002 executed by the

deceased in their favour. They claim the right in the property by virtue of the said Will, which has not been probated. It is settled by this Court in C.G. Rajendran - v. M. Senthilkumar reported in 2003 1 LW 43(cited supra) followed by Ganshamdoss Narayandoss Vs. Gulab Bi Bai, that unprobated Will can be relied on only for the collateral purpose and not in order to establish his right under the Will. In that view, it is clear that no right can be claimed by the revision petitioners as per the said unprobated Will. Hence Section 211 will not come to the help of the revision petitioners claiming to be the beneficiaries under the said unprobated Will. When no right has been enured to the revision petitioners by virtue of the unprobated Will, on the basis of the said Will, the revision petitioners cannot claim to be the legal representatives of the deceased K.R.Raju. Even it is to be construed that the impleading petition filed subject matter of this revision is under Order 22 Rule 10 C.P.C., they cannot be added as necessary parties, since they are not legal representatives of the deceased being the step mother, step brothers and step sisters. Therefore, in any view of the matter, the revision petitioners are not established that they have to be added as necessary parties by virtue of the unprobated Will dated 12.2.2002 and as the legal representatives of the deceased K.R.Raju, the sole respondent in the appeal u/s 211 of the Indian Succession Act. The first appellate Court considering all these aspects has rightly dismissed the petition I.A.No.63 of 2003. Such order not being erroneous and improper is to be confirmed.

10. In view of the discussions made above, this Civil Revision petition fails and is dismissed. No costs. The order dated 26.2.2003 in I.A.No.63 of 2003 in A.S.No.29 of 2000 passed by the District Court, Nilgiris at Uthagamandalam is confirmed.

In Savitri Devi Vs. District Judge, Gorakhpur and Others, the Hon"ble Supreme Court has held thus:-

9. In C.G.Rajendran - v. - M.Senthilkumar reported in 2003 1 LW 43 this Court (A.S.VENKATACHALAMOORTHY,J., as he then was) has held that the unprobated Will could be used for collateral purpose, but not in order to establish the right under the unprobated Will.

10. Therefore, through the said unregistered Will having not been probated, the petitioners in the petition I.A.No.63 of 2003 subject matter of this revision, cannot seek to implead them in the appeal, inasmuch as they did not claim that they are legal representatives, but seek to establish their right in the movable and immovable properties left over by the sole respondent in the appeal. Therefore, the dismissal of the petition by the first appellate Court cannot be said to be erroneous and improper and therefore, it is to be confirmed.

"Order I Rule 10 C.P.C. enables the court to add any person as a party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of a multiplicity

of proceedings is also one of the objects of the said provision in the Code."