

**(1970) 11 KAR CK 0003**

**In the Karnataka High Court**

**Case No :** Civil Revision Petition No. 1630 of 1969

Ashwath Rao and Others

APPELLANT

Vs

Sushilabai and Others

RESPONDENT

**Date of Decision :** 03-11-1970

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3, Order 6 Rule 17, Order 7 Rule 7, 2 (11)

**Citation :** AIR 1971 Kar 141 : (1970) 2 MysLJ 574

**Hon'ble Judges :** B. Venkataswami, J

**Bench :** Single Bench

**Advocate :** S.R. Kagalkar, for the Appellant; K.S. Savanur, for the Respondent

**Final Decision :** Allowed

## Judgement

B. Venkataswami, J.—This petition arises in the following way. The plaintiff in O. S. No. 2/1 of 1965 on the file of the Civil Judge, Raichur, filed the suit against one Kattamma, for partition and possession of properties left behind by her husband and father-in-law. It is alleged that she and Kattamma alone were entitled to succeed to the said properties.

The defendant Kattamma died on 20-5-1968 leaving behind her the plain-tiff as the sole heir, according to the plaintiff. Ordinarily, the suit abates in such circumstances. But on 17-8-68 an application, purporting to be under R. 17 of Order VI read with Rule 7 of Order VII and Rule 3 of Order I, Civil P. C. was filed by the plaintiff to bring the proposed legal representatives on record. The ground on which they are sought to be brought on record is that they were in possession of the suit properties as intermeddlers, thus falling within the definition of "legal representative" u/s 2(11) of the Civil P. C.

2. The proposed legal representatives after notice entered appearance and contested the stand of the plaintiff and objected to be brought on record as such legal representatives of Kattamma the deceased defendant. Among the grounds

urged by them, it was alleged that the plaintiff had no title to the suit properties and that they have been in possession of them in their own right. They do not, however, deny the title of Kattamma to the suit properties. On these pleadings, the court allowed the application. Although the application as such had not been made under Rules 3 and 5 of the Order 22 of C. P. Code, the Court appears to have dealt with the question with reference to these provisions.

Aggrieved by this order, the proposed legal representatives have approached this court. It is also relevant to notice that the petitioners themselves at one stage had attempted to come on record, presumably claiming a title adverse to both the parties to the suit. I should, however, like to clarify that from the records before me it is not possible to predicate with certainty what their grounds were in the said petition. That petition was rejected.

3. Sri S. R. Kagalkar, the learned counsel appearing in support of the petition, submitted that the petitioners could not be brought on record as the legal representatives of the deceased Kattamma, mainly for the reason that they were not claiming title under the deceased, nor did they at any time claim to be heirs of such person. Alternatively, he submitted, that on her own showing the plaintiff claims to be the heir of the deceased Kattamma and as such the suit necessarily abates as she could not sue herself in the capacity of the heir of the defendant.

He further argued that in the facts and circumstances of the case, his clients could not be said to be legal representatives or intermeddlers merely on the ground that they were in possession of the suit properties, albeit in their own right, so as to bring them within the scope of the definition in Section 2(11), Civil P. C. Lastly, he contended that the plaintiff in the suit had sued for partition and possession in the legal character of a sharer and she could not now be permitted to sue third parties for possession on the basis of title. In short the amendment, if allowed, would bring about a total change in the cause of action.

4. Sri K. S. Savanur, the learned counsel appearing on behalf of the plaintiff-respondent, placed strong reliance on the definition of "legal representative" in Section 2(11), Civil P. C. and submitted that the proposed parties, being in possession of the suit properties are intermeddlers and could therefore be brought on record as such. He also relied on certain decisions which I propose to refer in order to clear the ground regarding the true legal position in regard to the matter on hand.

5. In the case of AIR 1922 249 (Privy Council) the Privy Council observed that rules of procedure were intended to secure proper administration of justice and therefore they should be made to serve and be subordinate to that purpose so that powers of amendment must be enjoyed and should always be liberally exercised "but nonetheless no power has been given to enable one distinct cause of action to be substituted for another, nor to change, by amendment, the subject matter of the suit." (underlining by Court).

Before the Supreme Court, in *The Andhra Bank Ltd. Vs. R. Srinivasan and*

Others, , a question arose whether the legatee of a part of an estate would be a legal representative within the meaning of Section 2(11), Civil P. C. In that context it was observed, at p. 239 of the report, thus:

".....In regard to the intermed intermeddlers they are said to represent the estate even though they are in possession of parcels of the estate of the deceased and so there should be no difficulty in holding that the clause "a person who in law represents the estate of a deceased person" must include different legatee under the will. There is no justification for holding that the "Estate" in the context must mean the whole of the estate." (underlining by Court).

6. In the light of the above enunciations, I consider it unnecessary to refer to the other decisions referred to by Sri Savanur. It is clear from the passages extracted above that however liberally a Court may view a case for amendment it will not enable it to allow an amendment which would convert a suit of one character into another, and a "legal representative" could be "a person who in law represents the estate of a deceased person," including an inter-meddler.

7. In the instant case, the plaintiff had not made the petitioners parties to the suit as persons in possession of the properties, admittedly, in regard to which both she and the deceased defendant were jointly entitled. It is also manifest that the suit was not against the property of the deceased defendant as such. What was being claimed by the plaintiff in the suit is her own share of the property.

It may perhaps be possible that on the death of a defendant the persons in possession of the property could be said to represent the estate of the deceased and thus be brought on record, in the absence of any circumstance pointing to the fact that the person in possession does not intend to represent the estate of the deceased as such. But the question is whether the suit as laid originally was against the property of the deceased defendant? It is plain from all the facts and circumstances of the case that the plaintiff was claiming only her share by partition. Hence it is reasonable to hold that the suit was not in respect of the share of the deceased defendant.

It, therefore, follows from this that the persons in possession of that share of the property of the deceased, cannot be said to be persons falling within the category of legal representatives u/s 2(11), Civil P. C., although they may fill the character of "intermeddlers" as contended by Sri Savanur. Even in such a case a question may still arise whether a third party who claims to be in possession in his own right can be said to be an intermeddler of the sort contemplated u/s 2(11), Civil P. C. In the view I have taken, it is not necessary to answer this Question in the present proceedings.

8. The question whether the amendment sought for would alter the cause of action or the subject matter of the suit may now be considered. The suit as laid originally was one for partition and possession of the plaintiff's share of the properties which she and the defendant were jointly entitled. After the death of

the defendant the plaintiff, according to her, will become full owner of all the properties. If the amendment allowed were to stand, the plaintiff's suit will be one for title and possession as against third parties who claim title in themselves. In my judgment, this state of affairs would clearly amount to bringing about a somewhat drastic change in the subject matter of the suit as also the cause of action. This is clearly opposed to the limitation imposed in the Privy Council case relied on by Sri Savanur. For this reason also the order of the learned Civil Judge cannot be sustained.

9. In the light of the above discussion, I consider it unnecessary to deal with all the contentions of Sri Kagalkar, For the above reasons, I am clearly of the opinion, that the order under revision cannot be sustained. It is accordingly set aside. The application for amendment is, therefore, dismissed.

10. The Civil Revision Petition succeeds and is allowed, but without costs.