
(1998) 12 AP CK 0032
In the Andhra Pradesh High Court
Case No : CRP No. 4291 of 1998

Dokala Buchiraju

APPELLANT

Vs

Dokala Bangaramma (Died) by LR

RESPONDENT

Date of Decision : 13-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 5, 11, 2(11)
Succession Act, 1925 — Section 213, 57

Citation : (1999) 1 ALD 676 : (1999) 1 ALT 527

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mr. V.S.R. Anjaneyulu, for the Appellant; Mr. M.V. Durga Prasad, for the Respondent

Judgement

1. This revision petition is filed by the original defendant challenging the judgment and order dated 21-8-1998 passed by the Senior Civil Judge, Kovvur on IA No.935 of 1997 in OS No.45 of 1997.

2. By the impugned order, Beela Parvati has been brought on record as the legal representative of the deceased sole respondent Dokala Bangaramma on the basis of the registered Will dated 8-1-1997, marked in the case as Ex.A1.

3. The learned Counsel appearing for the petitioner contended that the Will is not proved according to law and there are suspicious circumstances and the Will is a fabricated document at the instance of PW1, Beela Maheswara Rao, the husband of Parvati. He further submitted that on the basis of the Will, a person cannot be permitted to continue the suit in view of the judgment of this Court reported in Akkarayoyina Apparao Vs. Korad Ammoru and Others, . He submitted that at any rate, the deceased was not of sound disposing state of mind and as such the Will is not genuine. The lands are situated at Polavaram, within the jurisdiction of the Sub-Registrar, Polavaram, whereas, the Will is registered at Rajamundry. In fact, his client had filed Ex.B6, a notice before the Sub-Registrar, Polavaram requesting him not to register any document pertaining to the petitioner, without

hearing him. But PW1 got it registered at Rajamundry by creasing this document. Therefore, he contended that on the basis of these documents, the respondent-Parvati could not have been brought on record as legal representative of the deceased plaintiff. On the other hand, the Counsel appearing for the respondent contended that the Will is genuine and admittedly, the deceased Bangaramma was residing with Parvati at Rajamundry. The deceased Bangaramma had already filed the present suit against the petitioner and the petitioner and his brothers had filed a separate suit for declaration bearing OS No. 144 of 1996 against the deceased plaintiff Bangaramma and the said suit is pending. The deceased Bangaramma was prosecuting her present suit and also was contesting the said suit of the defendant and his brother and to avoid future litigation she has executed a Will in favour of Parvati, who is no other than her husband's daughter by another wife. The deceased Bangaramma had no issues and out of love and affection, she has executed the Will in favour of Parvati. Even otherwise, the Will is proved by examining PWs.2 and 3, who are the attestors of the Will. The scribe of the Will could not be examined, as his whereabouts were not traceable and as such notice could not be served, inspite of the fact that summons were taken to him. He contended that the deceased was contesting the suit against the defendant and his brothers and even the matters went upto the High Court. And as she was litigating till her death, it cannot be stated that she was of unsound mind. At no point of time, her alleged unsoundness was pleaded in any of the proceedings between the plaintiff and defendants, even before the High Court. It is only to take undue advantage of the death of Bangaramma, against whom the defendant and his brother had filed a separate suit in OS No. 144 of 1996, the defendant and his brother in order to usurp the suit property had taken all such untenable pleas. He further contended that the Will is a registered Will and on the basis of such a Will, a legatee can be brought on record as the legal representative. He submitted that the judgment of this Court reported in A. Appurao's case (supra) cannot be taken as laying down correct law, in view of the earlier judgment of this Court and also the judgment of the Supreme Court. He submitted that at any rate, the trial Court on appreciation of the entire evidence on record, has brought the respondent-Parvati on record as legal representative of the deceased Bangaramma, and it is not a fit case for interference u/s 115 of CPC and therefore prayed for the dismissal of the revision petition.

4. Both the Counsel took me through the impugned order in this case. From the reading of the order, I find that Smt. Parvati, in order to prove that she is the legatee under the Will, produced Ex.A1, the registered Will. She examined PWs.2 and 3, who are the attestors. Though she did not examine herself, but her husband was examined as PW1, and he produced Ex.A1 in evidence. PWs.2 and 3 who are the attestors, deposed that the deceased was in a sound state of mind when she executed the Will. PW3 is a practising Advocate. On the basis of this evidence, the Court below held that the Will Ex.A1 is proved prima facie and Smt. Parvati could be brought on record as legal representative of the deceased

Bangaramma, being a legatee under the Will.

5. From the facts pleaded in the case, I find that Smt. Parvati is the daughter of the deceased plaintiff's sister by name Ramayamma. She was the second wife of her husband. Admittedly, deceased Bangaramma had no issues and Smt. Parvati was born to Dokala Papaiah, the husband of the deceased plaintiff-Bangaramma and according to the case of Smt. Parvati, she being the daughter of Dokala Papayya, she is the step-daughter of Bangaramma and even otherwise, there is a Will in her favour and as such, she could come on record as the legal representative of the deceased Bangaramma. However, the defendant-petitioner contended that there was no valid marriage between Dokala Papayya and Dokala Ramayya, though they were living together. The Court below by observing that it is not necessary to determine at this stage, whether there was a valid marriage between Ramayamma and Papayya, but by taking into the effect that the Will is a registered Will and, it has been prima facie proved by the attestors PWs.2 and 3, who are not strangers to the family of the plaintiff and defendant, held that the Will is proved. It further observed that the attestors also have identified the deceased before the Sub-Registrar, and admittedly as the deceased plaintiff was residing with Smt. Parvati at Rajahmundry. By observing that the deceased was between the age of 85 to 90 years and she was prosecuting the present case and was contesting the suit filed by the defendants in OS No.144 of 1996, including the proceedings before the High Court, held that she was of sound state of mind at the time of execution of the Will. Though certain motives were attributed to PW3, that he was not a reliable advocate, the Court below relied on his evidence. It held that having regard to the relationship between the deceased and the PW3, it is natural that services of PW3 were availed of for drafting the Will and there are no suspicious circumstances and as such on the basis of evidence of PWs.2 and 3, the Will is prima facie proved and Smt. Parvati is entitled to be brought on record as legal representative of the deceased Bangaramma. The Court below also further held that the registering the Will at Rajahmundry was natural, since the deceased was residing at Rajahmundry and as such, the Will cannot be held to be a fabricated document. The Court below further held that the law declared by the Supreme Court is that a legatee under the Will can be brought on record as the legal representative of the deceased in a suit, and the judgment of the Supreme Court was binding on it, and the law laid down by the judgment of this Court in A. Apparao's case (supra) was contrary to the law laid down by the Supreme Court, and accordingly allowed the present IA for bringing Smt. Parvati on record as the legal representative of the deceased.

6. However, the learned Counsel for the petitioner contended that the Will is not proved and it is not a genuine document, the deceased had no sound state of mind and the Will is fabricated by PW1 by colluding with PWs.2 and 3, the attestors. He relied upon number of judgments of the Supreme Court and of this Court regarding the proof of the Will and suspicious circumstances and the disposing state of mind of the deceased etc. But in my humble opinion, all those judgments would not be relevant for the purpose of consideration in this case, in

view of the fact that bringing a person on record on the basis of the Will is only for the purpose of representing the estate of the deceased and such order passed on a summary enquiry in terms of Order 22, Rule 5 CPC does not operate as res judicata in subsequent proceedings as held by the High Court of Madras in *Muniappa Nadar and Others Vs. K.V. Doraipandi Nadar and Another*, . In the said judgment, the High Court of Madras referring to Order 22, Rule 5 of CPC and earlier judgments of other High Courts observed as under :

"However, that enquiry and adjudication was under Order XXII, Rule 5 CPC and was only for the limited purpose of enabling the legal representative to carry on the suit so that the adjudication may be binding on the estate and cannot have the effect of conferring rights on the properties in favour of the legatee under the Will and in terms of the Will. The enquiry under Order XXII, Rule 5 CPC though held after examination of witnesses is nevertheless summary in character and is not an appealable order. Further, the question whether a person can be permitted to be brought on record as the legal representative of a deceased person for the purpose of continuing the proceedings already begun is a matter collateral to the suit and any adjudication arrived at in the course of such an enquiry cannot operate as res judicata. In *Pakkran v. Pathumma* (1913) 25 Mad. LJ 279, it has been held that the question whether a person should be admitted as the legal representative of the plaintiff to continue a suit cannot be regarded as a question arising in the suit itself being only a matter collateral to the suit and any decision arrived at cannot operate as res judicata, when a question arises in some other suit as to succession to the deceased. In *Ram Kalap Vs. Banshi Dhar and Others*, , the same view has been taken. In *Daulatram v. Mt. Meera* AIR 1941 Lah. 142, points out that an order passed under Order XXII, Rule 5 CPC not being open to an appeal, if it were to be treated as finally determining the rights of any of the claimants to the property in suit would adversely affect the interest of a disappointed claimant and, therefore, it should be limited to the purpose of carrying on the suit and cannot have the effect of conferring any right to heirship or to property. Nataraja, J., in *Krishnakumar Vs. N. Goverdhana Naidu and Another*, , examining the nature and scope of the enquiry under Order XXII, Rule 5 CPC, pointed out that though under Order XXII, Rule 5 CPC a duty is cast on the Court to determine who the legal representative of a deceased party is, there need not be a comprehensive and exhaustive enquiry, for the simple reason that the decision has its inherent limitations and the recognition of a rival contender as the legal representative of the deceased party is only for facilitating the early disposal of the action and the recognition of such a right in a party to a proceedings will not confer right on the recognised representative in the estate or property of the deceased nor will such a finding operate as res judicata in a subsequent proceeding. The absence of the provision of an appeal from an order passed under Order XXII, Rule 5 CPC, was also relied upon to support the conclusion that the order cannot be characterised as one finally decided by a Court. To the similar effect is the decision in *Koneridoss Vs. N. Subbiah Naidu and Others*, . In *Suraj Mani v. Kishorilal* AIR 1979 HP 74, the order bringing on

record a person on the strength of a Will was challenged on the ground that a trespasser had been brought on record. While considering this objection, R.S. Pathak, CJ pointed out that the substitution of a deceased person by his legal representative heir to the property of the deceased and a finding given only for the purpose of further prosecution of the suit cannot be construed as a decision on merits, which can operate as *res judicata*, A Full Bench of the High Court of Punjab and Haryana has laid down in *Mohinder Kaur and Another Vs. Piara Singh and Others*, , that a decision under Order XXII Rule 5 CPC is intended only to facilitate the orderly conduct of a proceeding and to avoid delay in the final decision till persons claiming to be representatives of the deceased party get the question of succession settled through a different suit and such a decision does not put an end to the litigation, nor would it determine any of the issues in controversy. It was also further pointed out that the proceedings are of a very summary nature and the grant of an opportunity to lead some sort of evidence would not in any manner change the nature of the proceedings. Viewed in the light of the aforesaid principle, it follows that the recording of the 1st respondent as the legal representative of the deceased Mayakaruppa, the 2nd respondent in the second appeal was only for the purpose of enabling the further conduct of the second appeal representing the estate of deceased Mayakaruppa and that cannot however be construed as conferring any right to property on the 1st respondent, as what was considered and decided in the course of the enquiry under Order XXII, Rule 5 CPC was only the representative capacity of the 1st respondent and not his rights to the property."

To the same effect also is the judgment of High Court of Himachal Pradesh reported in *Suraj Mani and Another Vs. Kishori Lal*, . The High Court of Punjab and Haryana in the decision reported in *Mangat and Another Vs. Surja*, , further pointed out that the word "determined" found under Order 22, Rule 5 CPC is a determination based on a summary enquiry and a detailed decision is not necessary. It pointed out that the word "determined" cannot be equated with "decided" and as such, such determination of the legal representative does not operate as *res judicata* in the subsequent suit. Moreover, this Hon'ble Court held in *Tynala Musalayya Vs. J. Mohanraj and Others*, , that a legatee under the Will can be added as legal representative under Order 22 and obtaining a probate is not necessary. In view of this position of law, the proof of the Will as recorded by the Court below has to be taken only for the purpose of representing the estate of the deceased for continuing the present proceedings. The Will in question is a registered document and it has been *prima facie*, proved by two attestors and the Court below had accepted it as a genuine document and it also held that the testator had disposing state of mind. In these circumstances, the impugned judgment and order of the Court below does not call for interference. Moreover in the decision reported in *Masimukkula Narayana and others Vs. Masimukkula Suryakantham*, , this Court has ruled that legatee under the Will may establish his or her right without obtaining a probate of the Will or letters of administration. By referring to Sections 57 and 213 of the Indian Succession Act,

1925 and also by relying upon earlier judgment of this Court reported in A.S. Murthy v. D.V.S. Murthy 1979 (2) ALT 347, this Court has held that Section 213(1) of the Indian Succession Act, 1925 excludes the Wills executed by persons residing in the State of Andhra Pradesh, in respect of the properties situated in Andhra Pradesh and accordingly concluded that, without obtaining probate or letters of administration, the legatees are entitled to establish their rights in the property.

7. However, the learned Counsel for the petitioner - defendant strenuously relied upon the judgment of this Court reported in A. Apparao's case (supra) contending that on the basis of the Will, the legal representative cannot be brought on record to continue the proceedings. From the reading of the said judgment, I find that the learned single Judge of this Court held that a person could not be brought on record as the legal representative on the basis of the Will, as the right to property under the Will comes under the Succession Act and as such the legatee would not be a legal representative within the meaning of Section 2(11) of CPC. His Lordship further held that a person claiming under the Will as a transferee of the property, has an independent right to be established in appropriate framed suit as against the person who are going to be effected by such Will, But in my humble opinion, this judgment appears to be in conflict with the judgment of the Supreme Court reported in Stnt. Ambalika Padhi v. Radhakrishna Padhi 1992 (1) APLJ 47. According to the said judgment, a legatee under the Will can come on record as a legal representative on the same cause of action, the deceased had pleaded in the suit. It is necessary to note the observations of the Supreme Court as under :

"22. It would be evident that none of the decisions support the proposition that even where the subject-matter of the suit is right to property and the legal representatives wish to continue the suit as originally framed, they cannot be permitted to do so if they are not natural heirs or if they claim on the basis of a deed of settlement and/or Will."

In these circumstances, it is clear that the judgment of the learned single Judge of this Court reported in A. Apparao 's case (supra) cannot be taken as laying down the law correctly. The learned single Judge of this Court, in the decision (supra), also has not considered the judgment of the Supreme Court reported in The Andhra Bank Ltd. Vs. R. Srinivasan and Others, , in which the Hon''ble Supreme Court by overruling the judgment of the High Court of Madras reported in Natesa Sastrigal and Another Vs. Alamelu Achi by power agent, K.S. Sundaram Chettiar, , held that a legatee under the Will would be a legal representative in terms of Section 2(11) of CPC, by observing as under :

"The whole object of widening the scope of the expression "legal representative" which the present definition is intended to achieve would be frustrated if it is held that legatees of different portions of the estate of a deceased do not fall within its purview. Logically it is difficult to understand how such a contention is consistent with the admitted position that persons who intermeddle with a part of

the estate are legal representatives. Besides if such a construction is accepted it would be so easy for the estate of a deceased to escape its legitimate liability to pay the debts of a deceased debtor only if the debtor takes the precaution of making several legacies to different persons by his Will. Besides, as a matter of construction, if different intermeddlers can represent the estate different legatees can likewise represent it. In regard to the 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 legatees under the Will. There is no justification for holding that the "Estate" in the context must mean the whole of the estate. Therefore, we are satisfied that the plain construction of Section 2(11) is against Mr. Sasiri's argument, apart from the fact that considerations of logic and common sense are equally against it.

(19) in support of his argument Mr. Sastri has referred us to a decision of the Madras High Court in *Natesa Sastrigal and Another Vs. Alamelu Achi* by power agent, K.S. Sundaram Chettiar, . In that case the Madras High Court no doubt seems to have observed that Section 2(11) does not include legatees of part of the estate. With respect, we think the said observation does not represent the correct view about the interpretation of Section 2(11)."

The learned Counsel for the petitioner also relied upon the judgment of the Supreme Court reported in *T. Venkata Narayana and Others Vs. Smt. Venkata Subbamma (dead) and Others*, . But the facts in the said decision are distinguishable from the facts of this case. That was a case for injunction, where the defendant pleaded that he had got rights on the basis of the Will and the contention was that the defendant had not obtained any probate on the basis of the Will. In those circumstances, the Hon"ble Supreme Court held that the suit for injunction cannot be permitted to be converted into a suit for probate of a Will, in order to go into the question whether the Will is proved or not. That was also a case in which obtaining a probate was required under the law. But as noted above, the judgment of this Court in *M. Narayana's case* (supra) held that in Andhra Pradesh State obtaining probate u/s 213(1) of the Indian Succession Act is not necessary. In the instant case, Smt. Parvati wants to come on record only as a legal representative of the deceased Bangaramma, in order to represent the estate of the deceased.

8. In view of the above circumstances, I do not think that the impugned order bringing Smt. Parvati on record as legal representative of deceased Bangaramma can be said to be one without jurisdiction, so as to call for interference u/s 115 of CPC. Moreover, the order under revision does not operate as *res judicata* for a subsequent suit. The impugned order is only an order for limited purpose of bringing Smt. Parvati on record as the legal representative of the deceased Bangaramma. Hence, for all the above reasons, I pass the order as under :

The revision petition is dismissed, but in the circumstances without costs.