

(1966) 09 AP CK 0008

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 852 and 860 of 1966

Gaddameedi Peeriah and Others

APPELLANT

Vs

Narayana Rao and Another

RESPONDENT

Date of Decision : 23-09-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4(4)

Citation : AIR 1968 AP 116

Hon'ble Judges : Chandra Sekhara Sastry, J

Bench : Single Bench

Advocate : Upendralal Waghray and P. Yadegiri Rao, for the Appellant; M.P. Ugle and S.V. Nizampetkar, for the Respondent

Judgement

Chandra Sekhara Sastry, J.—O. S. No. 8/64 on the file of the Munsif Magistrate's Court, Narayankhed, was filed by two plaintiffs against twenty defendants praying for a decree on the following terms:

- (1) It may be declared that the plaintiffs are the owners of the suit land.
- (2) The plaintiffs may be put in possession of the suit land by evicting the defendants.
- (3) The future mesne profits during the pendency of the case till the recovery of the possession (upto the date of return) of the suit land by the plaintiffs.
- (4) The costs of the suit may be awarded to the plaintiffs.
- (5) Any other further relief or any equivalent relief for which the plaintiffs are entitled may be awarded.

2. The plaintiff's case is that they are the owners of the suit land and are in possession and enjoyment of the same in their own right. While so the defendants took possession of the suit land on 13-12-1961 illegally with the support of the influential persons of the village and some goondas. That is stated to be the cause of action for the suit. It is further suited in paragraph 4 of the

plaint that the defendants took possession of the suit land by evicting the plaintiffs in bad faith and so the plaintiffs are entitled to sue. It appears, that the 6th defendant died on 26-8-1965 but his legal representatives were not brought on record. The 14th defendant died before 6-7-1962. The exact date is not known from the record placed before me, but it appears from the orders of the lower Court that the 14th defendant was served with summons in the suit but he chose to remain ex parte without filing a written statement. In fact six out of twenty defendants remained ex parte without filing their written statements. Those that filed written statements including the 6th defendant, pleaded that the ex parte defendants were not at that time in possession. The suit was filed in the year 1962. On 6-7-1962, the plaintiffs represented to the Court that the 14th defendant died and they would bring his legal representatives on record but so far the legal representatives are not brought on record. On behalf of the defendants two applications, I. As. 19 and 13 of 1988, were filed in the lower Court praying to dismiss the suit in its entirety, as it has abated for the reason that the suit has abated against defendants 6 and 14 and consequently the entire suit abates having regard to the allegations in the plaint and the reliefs claimed. These two applications were dismissed by the lower Court and hence these revision petitions are filed to revise those orders.

3. C. R. P. No. 852/66 relates to the prayer for dismissal of the suit on the ground that the legal representatives of the deceased 6th defendant were not brought on record and the suit abated against him and consequently against all the defendants. I find myself unable to appreciate the reasoning of the lower court in its order.

4. The lower Court has relied upon Order 22 Rule 4, sub-rule (4) of the CPC which is as follows:--

"The Court, whenever it sees fit, may exempt the plaintiff from the necessity to substitute the legal representative of any such defendant who has been declared ex parte or who has failed to file his written statement or who having filed it, has failed to appear and contest at the hearing: and the judgment may in such case be pronounced against the said defendant notwithstanding the death of such defendant, and shall have the same force and effect as if it has been pronounced before death took place."

The Sub-rule (4) has no bearing at all even on the death of the 6th defendant, because the 6th defendant appeared by counsel in the suit, and he filed a written statement. Therefore, the lower Court is in error in holding that the suit has not abated even as against the 6th defendant. In view of this sub-rule (4) Civil Revision Petition No. 852 of 1966 is, therefore allowed, as the order of the lower Court is based upon a total misapprehension of the scope of sub-rule (4) of Order 22 Rule 4 C P C.

5. Then with regard to the 14th defendant, who according to the plaintiff died before 6-7-1982, sub-rule (4) of Order 22, Rule 4 would apply. But, before it is

made applicable the Court must exempt the plaintiff from the necessity to substitute his legal representatives. I say that sub-rule (4) would apply because it appears from the order of the lower Court that the 14th defendant is ex parte and did not file any written statement. But, curiously, on 6-7-1962 the plaintiffs intimated to the Court that they would take steps to bring on record the legal representatives Unless an exemption is granted by the lower Court under sub-rule (4), the suit would abate as against the 14th defendant. It is contended by the learned counsel for the respondents that it is the case of the other contesting defendants that the 14th defendant had no right or title to the property and was not in possession at all and, therefore, the legal representatives of the 14th defendant need not be brought on record, as he would not be a necessary party to the suit, and that the Court can exempt the plaintiffs from bringing on record his legal, representatives. But, what appears from the record is that the 14th defendant is ex parte, and the allegation in the plaint is that the 14th defendant, along with the other defendants, trespassed on the suit property and evicted the plaintiffs. On the allegations in the plaint, the 14th defendant was in possession of the property on the date of the suit, though some of the defendants say in their written statements that he had nothing to do with the suit property. Therefore, it would be necessary for the plaintiffs to request the Court to exempt the plaintiffs from bringing on record the legal representatives of the 14th defendant, or to seek to bring on record his legal representatives after getting the abatement set aside as against him.

6. It is contended by Mr. Waghray, the learned counsel for the petitioners that such exemption must be sought before the suit has actually abated i.e., within 90 days of the death of the 14th defendant. This aspect also has not been considered by the lower Court.

7. For the above reasons, the order of the lower Court in I. A. 13 of 1966 also has to be set aside, and the two I. As. 19 of 1966 and 13 of 1966 in O. S. No. 8 of 1964 are remanded to the lower Court for fresh disposal in the light of the observations made in this judgment.

8. But I make it clear that since the judgment is not yet pronounced in the suit, it is open to the plaintiffs, if so advised, to take such steps as they may be advised to take to bring on record the legal representatives of the 6th defendant or to file an application in the lower court to bring on record the legal representatives of the 14th defendant also or to exempt the plaintiffs from the necessity of bringing on record the legal representatives of the 14th defendant. Then the lower Court will consider those applications on their merits along with these I. A. Nos. 13 and 19 of 1966.

9. The petitioners in the Civil Revision Petitions will have the costs from the plaintiffs (respondents) in C. R. P. No. 852 of 1966 There will be no order as to costs in C. R. P. No. 860 of 1966.