
(1990) 11 AP CK 0022

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 449 of 1990

Gangupati Savitramma and Another

APPELLANT

Vs

Katuri Ramadevi and Others

RESPONDENT

Date of Decision : 08-11-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 5, 115

Citation : (1991) 1 ALT 453 : (1991) 2 APLJ 21

Hon'ble Judges : Eswara Prasad, J

Bench : Single Bench

Advocate : P.V.R. Sarma, for the Appellant; C. Poornaiah, for the Respondent

Final Decision : Allowed

Judgement

Eswara Prasad, J.—In this revision, the petitioners question the order of the Court below, in impleading all the persons claiming to be the Legal Representatives of the deceased-second defendant in the suit, without determining as to who are the Legal Representatives of the deceased.

2. The learned counsel for the petitioners contends that Order 22 Rule 5 CPC is mandatory and the Court is bound to decide the question as to who are the Legal Representatives of the deceased party when a dispute is raised and that the decision on such a dispute cannot be postponed to the later date. The Court below observed that all the persons claiming to be the Legal Representatives can be impleaded without prejudice to their respective contentions. It is further observed by the Lower Court that there will be no executable decree that can be passed in favour of the deceased-second defendant. The learned counsel for the petitioners contends that certain amounts were paid to the plaintiff towards mesne profits in excess of the amounts payable to the Plaintiff and that the Legal Representatives of the deceased will be entitled to a refund of the amounts paid in excess. Therefore prejudice will be caused to the petitioners, if the order under revision is allowed to stand.

3. The learned counsel for the respondents contends that the question as to who are the Legal Representatives can be decided at a later stage if the question of any payments to the Legal Representatives of the deceased arises at a future date.

4. Order 22 Rule 5 C.P.C. is clear and mandatory. When a dispute is raised as to who are the Legal Representatives of the deceased party, it is the duty of the Court to decide the said question. In T.S. Nagappa Nadar Vs. T.S. Karupiah Nadar and Another, it was held that an order impleading Legal Representatives without determining as to who are the Legal Representatives of the deceased is a material irregularity which requires interference u/s 115 CPC. In Jato Singh and Another Vs. Mt. Malti Kuer, it was held that the question relating to the Legal Representatives of the deceased has to be decided as soon as the dispute is raised and that the determination of the said question cannot be postponed. To the same effect there are various decisions of the High Courts including the decisions in Kali Pachi v. Ramalakshmi, AIR 1953 TC 158, Kunchikavu Vs. Kesavan Nayar, and Ram Parkash and Another Vs. Smt. Shamkari and Others, .

5. In view of the settled law as laid down by the decisions referred to above, the order of the Court below cannot be sustained. The petitioners are likely to be prejudiced in the event of the Court ultimately finding that certain amounts were due to the deceased second defendant. In such circumstances, the order of the court below cannot be allowed to stand and is accordingly set aside. The Lower Court will enquire under Order 22, R. 5 and pass orders. The Civil Revision Petition is allowed. No order as to costs.