
(1953) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision No. 51/3 and Appeal No. 241 of 1951

Lakshmamma

APPELLANT

Vs

Someswar Rao and Another

RESPONDENT

Date of Decision : 13-01-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 14 Rule 1

Citation : (1953) 01 AP CK 0004

Hon'ble Judges : Manohar Pershad, J;Deshpande, J

Bench : Division Bench

Advocate : K. Ramamurthy, for the Appellant; Ramaswamy Iyengar, for the Respondent

Judgement

1. These are two connected petitions, one an appeal and the other a petition in revision, filed on behalf of Kalluri Lakshmamma, the Plaintiff against the order of the Court below dated 3-9-1951 holding that Defendant 3 is not a necessary or a proper party and refusing to frame certain issues.

2. Shri Ramaswamy Iyengar, the learned advocate, for the Respondent raised a preliminary objection that the order of the Court below holding that Defendant 3 is not a proper or necessary party and that her name should be struck off, is not an order which is appealable, and as such, the appeal is not tenable. Reliance is placed on the cases of ? Abdul Hakim Khan Vs. Ram Gopal and Others, (A) and ? Shair Ali Vs. Jagmohan Ram and Another (B).

3. On behalf of the Appellant Shri Ramamurthy urged before us that where the name of the Defendant is struck out, the effect is the same as if the suit is dismissed against him and as far as he is concerned, the suit comes to an end, and therefore, he contends that the appeal is proper. Reliance is placed on ? Ramji Pandey Vs. Alafkhan and Others, (C).

4. After giving a careful consideration to this question, we feel that there is a difference of opinion among the various High Courts in the Indian Union. In the

case of ? Jujishti Panda Vs. Lakshmana Dola Behara and Others, (D), Beasley C.J. and Bardswell J. held :

Where parties have been wrongly joined and the suit against them is given up by the Plaintiff or upon that ground he exonerates them or there is a finding come to that they have been wrongly joined, then the correct procedure is to strike out their names as having been improperly impleaded. On the exoneration or the striking out of the names of persons on the ground of misjoinder, they cease to be parties to the suit. And these Defendants must be treated as persons who had been dismissed from the suit and not as persons against whom the suit has been dismissed.

5. Arrayed against this view there are the decisions of the Rangoon, Allahabad, Lnhore and Patna High Courts. In the case of ? Mapu v. K.R.V.E.K Firm AIR 1934 Rang 154 (E). it has been held that:

An order striking out a person's name from the list of the Defendants is in effect an order dismissing the suit as against him and the dismissal of the suit as against him is final unless and until it is set aside by way of appeal".

6. In the case in Shair Ali Vs. Jagmohan Ram and Another (B), Mears C.J. and Sen J. held that:

Where a cause of action against a Defendant is specifically pleaded and a distinct relief has been claimed against him. and the Defendant is not impleaded only for the sake of convenience, an order directing the removal of the name from the array of the parties is in substance, although not in form, a decree, because the effect of the order is the refusal to grant the relief to Plaintiff which he had prayed for. The proper remedy for the party aggrieved from the order is to file an appeal and not an application in revision u/s 115.

7. In the case of ? Babu Ram v. Shafi-ul-Zaman AIR 1944 Lah 273 (F), Harries C.J. and Mahajan.J. held that:

The order of the Court removing the name of the Defendant from the array of parties was in effect an order of dismissal of the suit against him.

8. In the case of ? Jagdiswar Prasad Misra Vs. Harsaran Rai and Others, (G) Harries C.J. and Dhavle J. held similarly that:

The effect of striking off the name of a party from the array of the Defendants is that the suit as far as he is concerned comes to an end.

9. In a Privy Council decision ? Haveli Shah v. Shaikh Painda Khan AIR 192G PC 88 (H), there is a similar observation that striking out of the names would amount to this, that the suit was brought to an end as against those persons.

10. Thus it would appear from this that the majority view is that when a party's name is struck out, the suit comes to an end and as far as that person is concerned, it would be deemed to be dismissed against him.

11. There is no direct ruling of this Court on this point but the practice of this Court has been to treat an order of such a nature as a non-appealable order. Though there was no direct ruling we were inclined to refer this matter to a larger Bench, but the learned advocate for the Respondents Shri Ramaswamy Iyengar stated before us that he does not press this point in view of the fact that there is difference of opinion in the High Courts and a separate revision petition has been filed on behalf of the Appellant. But he contended that in that case, it has to be seen whether interference is justified in revision. As the learned advocate did not press this point and as a separate revision petition has also been filed, we do not wish to refer the matter to a larger Bench and enter into a detailed discussion of the point. We may nevertheless point out that the question whether an appeal would lie or not, would depend on the fact whether it is in substance a decree and whether the rights of the parties have been conclusively determined by the Court with regard to all or any of the matters in controversy in the suit. In our opinion there is a clear distinction between a case where a party's name is struck out on the ground of misjoinder and the case where the suit is withdrawn or abandoned at the last hearing. The provisions of O. 1, R. 10(2) would not apply to the latter case.

12. Now we have to see whether there is sufficient material to invoke our revisional jurisdiction. Shri Ramamurthy, advocate for the Petitioner, contends that his case is that Defendant 3 is the daughter of late Charidramma who had a share in the suit house, now sought to be partitioned and that Defendant 1 is not her adopted son nor has rights as a "Persona Designata" under the will by Chandramma which is fraudulent. He, therefore, argues that in her presence as the proper heir of Chandramma, the partition must be effected and instead of determining who is the proper heir, the learned Judge has erred in striking out the name of Defendant 3 from the array of Defendants. He, therefore, contends that Defendant 3 is not merely a proper but a necessary party for effective determination of the suit.

13. The second contention is that Defendant -3 has denied that she is the daughter of late Chandramma and claims to be the daughter of the Plaintiff while the Plaintiff denies both the facts. It is, therefore, necessary that an issue be framed to that effect. The third contention is that the learned Judge has erred in disallowing the issues as to whether Defendant 1 is the adopted son of Kalluri Veeria, husband of late Chandramma and the gift-deed and the will are fraudulent. These issues, he contends, are necessary for ascertaining the real nature of the case.

14. On behalf of the Respondents Shri Ramaswamy Iyengar, the learned Counsel urged before us that so far as Defendant 3 is concerned, she is neither a proper nor a necessary party as she is not entitled to any share or interest in the suit house or for a decree for partition or possession of any share there in.

15. With regard to the question of the issues being framed relating to the adoption of Defendant 1, the gift-deed and the will, he contends that in the

circumstances of the case, the questions relating to the adoption of Defendant 1, the gift-deed or of the will in his favour which have been raised by the Plaintiff, do not arise for determination in this suit as they are not germane or relevant to the adjudication of the Plaintiff's claim.

16. In order to appreciate the respective view points of the learned advocates of the parties, a reference to the pleadings is necessary.

17. In the plaint Plaintiff has averred that she is the widow of one Kalluri Ramanna and that Defendant 1 is the son of Maseti Kistia and styles himself wrongly as the adopted son of Kalluri Veeria and Chandramma, the widow. Defendant 2, it is stated, is the son of Defendant 1 and Defendant 3 is the daughter of the said Kalluri Chandramma by the said Kalluri Ramanna, husband of the Plaintiff with whom she lived as mistress almost from the time she* attained puberty; the husband of the Plaintiff died in 1913 and left cash and moveable property worth about Rs. 12,000/-; Plaintiff and the said Chandramma had Stridhan, that is, gold jewels weighing about 50 tolas given to her by the Plaintiff's husband while the said Chandramma was living in the Plaintiff's husband's house as mistress, he married Plaintiff; three years after her marriage, Defendant 3 was born to the said Chandramma and was living with them in the same house; Chandramma had acquired a dominating position" in the house and after the death of the Plaintiff's husband, she and her daughter continued to live in the house of the Plaintiff.

Plaintiff being illiterate used to be guided by her; she promised to manage her house and property for her benefit; she used to do money-lending business with the property of the Plaintiff; she had no money of her own left to purchase the properties; she purchased with Plaintiff's funds the house of Dubai Laxmia in Secunderabad; again with a portion of the said fund and jewels of the Plaintiff. cash left by the husband and the profits thereof, Chandramma purchased the house No. 2732 for Rs. 7,000/- out of which Rs. 6,000/-belonged to the Plaintiff. At the time of the purchase of the house, Chandramma said that she would purchase it in the name of herself and the Plaintiff and she would put Rs. 1000/- of her own and Rs. 6,000/- of the Plaintiff; Plaintiff was illiterate and reposed confidence in her and believed her version to be true. The expenses of Rs. 200/- for the said purchase were paid from the Plaintiff's funds; later the said house was improved at a cost of Rs. 8000/- from Plaintiff's properties.

Some time after the second marriage of Defendant 1, his second wife Nagamma began to quarrel with the Plaintiff and harass her; seeing this Chandramma rented a room for the Plaintiff "and put her there and gave her provisions and moneys for her expenses; later when the Plaintiff's eye-sight was completely spoiled and she could not cook for herself, Chandramma put the Plaintiff in the house of Defendant 3 who began to feed and look after the Plaintiff. After the death of Chandramma when the Plaintiff asked Defendant 3 about the "management of the property, she was informed by the husband of Defendant 3 that the sale-deed of house No. 2732 stands in the name of Chandramma and

Defendant 2 instead of the Plaintiff; that Chandramma executed two deeds: one gift-deed and the other will during her illness. Chandramma was not the full owner of the house, as such, she was not entitled to make a will; Chandramma in collusion with Defendant 1 exercised fraud on the Plaintiff to deprive her of her properties; the recitals in the documents are false to the knowledge of Chandramma and Defendant 1. In conclusion, Plaintiff prays for a declaration that she is entitled to the said house in proportion to her moneys (Rs. 14,200) and that Chandramma is entitled to only Rs. 1000/-. Defendants 1 and 2 have no manner of right to the said house; Chandramma is the mistress of the Plaintiff's husband and Defendant 3 is her daughter.

18. Defendant 1 totally denied the allegations of the plaint. Defendant 3 in her written statement denied that she is the daughter of Chandramma but alleged that she is the daughter of Ramanna and is entitled to the property as his heir; Chandramma had no right to the property and as such, she was not entitled to execute either a gift-deed or a will. Plaintiff, being the wife, is entitled to a declaration that she is entitled to the said house till her lifetime. Plaintiff filed a reply after which the case was posted for issues.

19. In the meantime, on 10-4-1951, Defendant 1 put in a petition stating that in view of the allegations of Defendant 3, there arises no question of her being entitled to any share in the said house or being granted a decree for partition or possession of any share therein in her favour and as such, Defendant 3 is not a necessary or proper party; and that her name should be struck off therefrom. The questions relating to the adoption of Defendant 1 or a gift-deed or the will in his favour which have been raised by the Plaintiff do not arise for determination, as they are not pertinent or relevant to the adjudication of the Plaintiff's claim. Plaintiff filed a counter after which the learned District and Sessions Judge heard the arguments of the parties and accepted the petition of Defendant 1 and directed that the name of Defendant 3 be struck off.

20. From a perusal of the pleadings it is clear that the real question in issues is whether the moneys belonging to Plaintiff's husband were invested in the house purchased by Chandramma and if so Plaintiff would be entitled to a share in the house proportionate to the amount invested and if the Plaintiff establishes this fact, she will be entitled to a decree.

21. We have now to see whether Defendant 3 is a necessary or a proper party and whether her presence is necessary for the proper adjudication of the case within the meaning of O. 1, R. 10, Code of Civil Procedure. Plaintiff wants to retain Defendant 3 alleging that she is the daughter of Chandramma and as Chandramma's share in the invested money is Rs. 1000/- she will be entitled to that amount. Secondly, Defendant 3 denied that she is the daughter of late Chandramma and claims to be the daughter of the Plaintiff and her heir, while Plaintiff denies both these facts. It is, therefore, necessary to decide the said points raised by the parties in order to decide the point at controversy. Thirdly, Defendant 1 claims to be the adopted son of Chandramma and he alleges that he

has a will in his favour which would affect the rights of Defendant 3. Under these circumstances, he contends that Defendant 3 is a proper and necessary party.

22. We are afraid, we cannot accept the contention of the learned advocate, in view of the allegations in the plaint; there arises no question of her being entitled to any share in this suit or any share or interest in the suit house for granting a decree for partition or possession in her favour. Plaintiff would be entitled to a decree provided she establishes that Rs. 14,200/- were invested from her property for the purchase of the house and that fraud was practised on her. The question of the interest of Defendant 3 would only arise to the share of Chandramma. The fact whether Defendant 3 is entitled to the share of Chandramma or Defendants 1 and 2, are questions which are not pertinent or relevant to the adjudication of the Plaintiff's claim; they are the rights "inter se" between Defendant 3 and Defendants 1 and 2, and Plaintiff's claim can be decided without having to determine those rights and the fact whether Defendant 3 is Ramanna's heir also does not become relevant for the determination of the suit. Admittedly, she would not be entitled to any share in the lifetime of the Plaintiff. Further Defendant 3 in para 7 of her written statement denies that she is Chandramma's daughter. When she denies that she is the daughter of Chandramma, the question whether she would be entitled to her share or not, does not arise, and a person is a proper party only if his presence before the Court is necessary to enable it to effectually and completely adjudicate upon and settle all the questions involved in the suit. In other words, the expression "proper party" means a party who may be interested in the result of the suit and who may have a right to seek the assistance of the Court in coming to a decision on the point at issue.

23. As discussed above, Defendant 3 is not at all interested in the result of the suit and, therefore, in our opinion also Defendant 3 does not in any way become a proper or a necessary party. Thus we find nothing wrong in the order of the Court below and this contention fails.

24. We have next to consider whether it is necessary to frame an issue regarding the fact of the adoption of Defendant 1 and the gift-deed and the will. As pointed out above, these are questions which are not pertinent or relevant to the adjudication of the Plaintiff's claim. Admittedly, Defendant 1 is in possession of the property. If the Plaintiff establishes her claim, she will be entitled to the possession of the property. The question whether Defendant 1 is the adopted son or not does not become material and it is not necessary for the adjudication of the Plaintiff's claim. These are questions "inter se" between the Defendants. The introduction of the said question and the framing of the issues regarding them, would, in our opinion, complicate matters and raise controversies which do not arise for decision in this suit.

25. We are, therefore, of the opinion that the issues pertaining to the adoption of Defendant 1 or the gift-deed or the will in his favour are not at all necessary. Thus there does not remain any force in this petition in revision. Petition in

revision is, therefore, dismissed. This order shall govern the connected appeal. Parties to bear their own costs.