
(2002) 09 AP CK 0056
In the Andhra Pradesh High Court
Case No : C.R.P. No's. 1350 of 1995

M. Kuppaswami Naidu

APPELLANT

Vs

V. Chandrasekhar Reddi and Others

RESPONDENT

Date of Decision : 17-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, 2(11)
Contract Act, 1872 — Section 202
Transfer of Property Act, 1882 — Section 52

Citation : (2003) 1 ALT 395

Hon'ble Judges : S.R.K. Prasad, J

Bench : Single Bench

Advocate : P. Jagadish Chandra Prasad and D. Seshadri Naidu, in CRP No. 1350 of 1995 and D. Ramesh, in CRP No. 1456 of 1995, for the Appellant; M.P. Chandramouli, to 4 in CRP No. 1350 of 1995 and for the respondent No. 81 in CRP. No. 1456 of 1995, for the Respondent

Judgement

S.R.K. Prasad, J.—Both the Civil Revision Petitions are heard together and are being disposed of by this common order as they arise out of the same suit.

Both the Civil Revision Petitions are directed against the orders dated 10-3-1995 made in I.A.Nos. 366 and 586 of 1990 in O.S.No. 318 of 1989 on the file of the Court of the Additional Subordinate Judge, Tirupathi.

2. The facts that arise for consideration can be briefly stated as follows;

The plaintiff is Srimad Abinava Ramanuja Brahmathantra Swathantra Prakala Swamiji. He is represented by his power of attorney holder Mr. N. Narasimha Reddy. The plaintiff filed the suit seeking division of the plaint schedule land into four equal shares and to allot 1/4th share to the plaintiff and to put him in separate possession of the same. Permanent injunction is also claimed restraining others from changing the physical features of the land. The plaintiff has also claimed some other reliefs. During the pendency of the suit, Srimad Abinava Ramanuja Brahmathantra Swathantra Parakala Swamiji died on

23-7-1992 and therefore the mutt is succeeded by another Matadhipathi Srimad Abhinava Vageesha Brahmathantra Swathantra Parakala Swamiji. The power of attorney holder viz., N. Narasimha Reddy presented the suit on behalf of the previous Matadhipathi.

3. The succeeding Matadhipathi filed an application I.A.No. 366 of 1993 to implead him as successor Matadhipathi. It is alleged by him that the power of attorney has been revoked by the previous Matadhipathi and that the power of attorney holder has played fraud and that the power of attorney comes to an end soon after the death of the person who executed the same. It is also stated that the power of attorney holder has sold away the property of the mutt without any authority and played fraud over the mutt. It appears that the said Narasimha Reddy has sold away some properties and the purchasers have filed I.A.No. 586 of 1990 claiming rights in the suit property and wanted to be impleaded as successors after the death of the Matadhipathi.

4. After enquiry, the lower Court impleaded the succeeding Matadhipathi as 81st defendant in the suit and the petitioners in I.A.No. 586 of 1990 who are the purchasers of the property are permitted to be impleaded as plaintiffs 2 to 5. Aggrieved by the said orders, the successor of the Mutt preferred CRP No. 1456 of 1995. The 4th defendant Mr. M. Kuppuswami Naidu preferred CRP No. 1350 of 1995 against the orders passed in I-A No. 586 of 1990.

5. The short point that arises for consideration is:

Whether there is any illegality or material irregularity in exercising the jurisdiction under Order 1 Rule 10 CPC and whether the petitioners are necessary and proper parties and whether the matters can be adjudicated without their presence?

6. It is stated in the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 by Justice P.S. Narayana at page 215 about the legal status of a Mahant as follows;

"7. Mahant's legal stature: The property belonging to a Math is in fact attached to the office of the Mahant and passed by inheritance to no one who does not fill the office. The head of a Math as such is not a trustee in the sense in which that term is generally understood but in legal contemplation he has an estate for life in its permanent endowments and an absolute property in the income derived from the offerings of his followers, subject only to the burden of maintaining the Institution AIR 1980 SC 707 Shri Krishna Singh v. Mathura Ahir ILR 27 Madras 435 Though in Vidyapurna v. Vidya Nidhi 6 Mad. 287, Tulasiram Das Vs. Ramprasanna Das and Others, Tulsi Ram v. Ram Prasanna it was held that head of the Math is a corporation sole, having a life estate in the dowments. It was however observed in Kailsasam Pillai v. Nataraja ILR 33 Mad. 205 that it cannot be predicated of the head of the Math that he holds the properties as a life tenant or a trustee but that question must be determined in each case upon usage and custom. Mahant is not a mere manager or custodian nor is he a

trustee in the strict sense holding the office of a Mahant by custom and usage of the institution. He has besides large powers of management and disposal, certain proprietary rights over the property of H.H. Sudhundra Thirtha Swamiar Vs. Commissioner For Hindu Religious and Charitable Endowments, Mysore, ST Swamiar v. Commissioner. In The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., it was observed on this aspect."

7. As per the law Lexicon, a Corporation Sole means a Corporation consisting of a single person, who is made a body corporate and politic, in order to give him some legal capacities and advantages, and especially that of perpetuity which as an individual person he could not have.

8. In Krishna Singh v. Mathura Ahir, AIR 1980 SC 707 the Supreme Court held as under:

84-85. According to the Hindu Jurisprudence, a religious institution such as a math is treated as a juristic entity with a legal personality capable of holding and acquiring property. It, therefore, follows that the suit instituted by the mahant for the time being, on its behalf is properly constituted and cannot abate under the provisions of Order 22 of the Code of Civil Procedure, on the death of the mahant pending the decision of the suit or appeal, as the real party to the suit is the institution. The ownership is in the institution or the idol. From its very nature a math or an idol can act and assert its rights only through human agency known as a mahant, shebait or dharmakarta or sometimes known as trustee."

9. It is clear from the principles laid down by the Supreme Court that if a Mahanth dies and succeeded by another Mahanth, the suit does not abate. It is also observed at paras 87 and 88 of the said judgment as follows;

"The correctness of the decision in Ramswarup Das v. Rameshivar Das is thus open to question. It does not stand to reason that when a suit is brought for possession by a mahant of an asthal or math, or by a shebait of a debottar property, and the defendant is adjudged to be a trespasser, such a suit should abate with the death of the mahant or shebait. This would imply that after a long drawn litigation, as here, the new mahant or shebait has to be relegated to a separate suit. The definition of legal representative as contained in Section 2(11) of the Code reads:

"Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

(87) The general rule is that all rights of action and all demands whatsoever, existing in favour of or against a person at the time of his death survive to or against his legal representative. In Muhammad Hussain v. Khushalo Edg, C.J., while delivering the judgment of the full bench, observed:

I have always understood the law to be that in those cases in which an action would abate upon the death of the plaintiff before judgment, the action would not abate if final judgment had been obtained before the death of the plaintiff, in which case the benefit of the judgment would go to his legal representative.

That, in our opinion, lays down the correct test."

10. The cause title of the plaint discloses that Mahanth has filed the suit represented by the power of attorney. As per the principles laid down by the Supreme Court, the succeeding Mahanth is entitled to be impleaded as a party in the place of the Mahanth who died and on the death of the previous mahanth the suit does not abate. It is well settled law that power of attorney comes to an end with the death of the person who executed it. The question whether anything remained to be done under the power of attorney can only be decided in the suit.

11. It is contended by the learned Counsel for the petitioners that the subsequent purchasers from the power of attorney holder are not necessary and proper parties. In support of his contention, he placed reliance on a decision reported in Sarvinder Singh Vs. Dalip Singh and Others, . The relevant portions of the said judgment are as under;

"Having regard to the respective contentions, the question that arises for consideration is whether the respondents are necessary or proper parties to the suit? It cannot be disputed that the foundation for the exclusive right, title and interest in the property, the subject-matter of the suit, is founded upon the registered Will executed by Hira Devi, the mother of the appellant as on 26-5-1952. The trial court noted that in a suit filed on a previous occasion by the appellant, the Will was propounded as basis for an exclusive right, title and interest in the said property. He impleaded Rajender Kaur, one of the daughters of Hira Devi, to the suit along with two other sisters and the suit came to be decreed by the trial court on 29-3-1974. The decree became final. In view of those facts, the necessary conclusion that can be deduced is that the foundation for the relief of declaration in the second suit is the registered Will executed by Hira Devi in favour of the appellant on 26-5-1952. The respondents indisputably cannot challenge the legality or the validity of the Will executed and registered by Hira Devi on 26-5-1952. Though it may be open to the legal heirs of Rajender Kaur, who was a party to the earlier suit, to rests the claim on any legally available or tenable grounds, those grounds are not available to the respondents. Under those circumstances, the respondents cannot, by any stretch of imagination, be said to be either necessary or proper parties to the suit. A necessary party is one whose presence is absolutely necessary and without whose presence the issue cannot effectually and completely be adjudicated upon and decided between the parties. A proper party is one whose presence would be necessary to effectually and completely adjudicate upon the disputes. In either case the respondents cannot be said to be either necessary or proper parties to the suit in which the primary relief was found on the basis of the registered Will executed by the appellant's mother, Smt. Hira Devi. Moreover, admittedly the

respondents claimed right, title and interest pursuant to the registered sale deeds said to have been executed by the defendants-heirs of Rajender Kaur on 2-12-1991 and 12-12-1991 pending suit.

(6) Section 52 of the Transfer of Property Act envisages that:

"During the pendency in any court having authority within the limits of India of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

It would, therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the court. Admittedly, the authority or order of the court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit."

12. In a latest decision rendered by three Judge Bench of the Supreme Court in Savitri Devi Vs. District Judge, Gorakhpur and Others, the Supreme Court held as under;

"The facts set out by us in the earlier paragraphs are sufficient to show that there is a dispute as to whether the first defendant in the suit was party to the order of injunction made by the court on 18-8-92. The proceedings for punishing him for contempt are admittedly pending. The plea raised by him that the first respondent had played a fraud not only against him but also on the court would have to be decided before it can be said that the sales effected by the first defendant were in violation of the order of the court. The plea raised by respondents 3 to 5 that they were bona fide transferees for value in good faith may have to be decided before it can be held that the sales in their favour created no interest in the property. The aforesaid questions have to be decided by the Court either in the suit or in the application filed by respondents 3 to 5 for impleadment in the suit. If the application for impleadment is thrown out without a decision on the aforesaid questions, respondents 3 to 5 will certainly come up with a separate suit to enforce their alleged rights which means multiplicity of proceedings. In such circumstances, it cannot be said that respondents 3 to 5 are neither necessary nor proper parties to the suit.

Order I, Rule 10 C.P.C. enables the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is

also one of the objects of the said provision in the Code."

13. This Court while dealing with the provisions of Order 1 Rule 10 CPC in Vasavi Kanyaka Seva Trust, Ramanthapur Vs. District Collector, R.R. Dist., Hyd. and others, held as follows;

"In view of the aforesaid principles as laid down by the Apex Court and also a Division Bench of this Court, the provisions under Order 1 Rule 10 CPC have to be given a very liberal interpretation. There cannot be a blanket proposition that in every suit for injunction, the parties cannot be impleaded and Order 1 Rule 10 CPC cannot be made applicable. No doubt, each case has to be looked from the facts and circumstances involving therein vis-a-vis the pleas as set up by the parties. If the parties on either side come up with independent titles and claims, it cannot be said that the scope of the enquiry is as narrow as to treat the suit as one for simpliciter injunction but certainly gets widened to embark upon the question of title. In Sannasi Ambalagarau V. Venkatapathy Chetty 1909 IC Vol.II 421 a Division Bench of the Madras High Court held:

"Where title is denied, a suit for injunction is maintainable, though not coupled with a prayer for declaration of title, as the prayer for an injunction necessarily involves a declaration of title."

As already held, it has to be seen as to whether the presence of the party, though may not be a necessary would be a proper one and enables the Court to properly adjudicate the matter in the presence of all the parties and the material as produced on their behalf. Any such denial would not only may lead to inconsistent decrees in respect of the same subject matter and in some cases, collusive decrees cannot be ruled out to hood-wink the real title holders. I have perused the affidavit filed in support of the applications to implead and I am satisfied that there is justifiable claim touching upon the subject matter and the respondent No. 3's presence would only enhance the assistance to the Court."

14. The Court has to bear in mind as to whether the succeeding Mahanth is a necessary and proper party to the suit. Obviously, the properties belong to the mutt. They were said to have been sold by the power of attorney holder an affidavit is said to have been given by the deceased Mahanth approving the sales.

15. It is contended by the learned Counsel for the petitioners herein that by revoking the power of attorney the principal is entitled to step into the litigation carried in the name of the agent. In support of his contention, he placed reliance on a decision reported in Union of India (UOI) Vs. Manmull Jain and Others, . The relevant portion is at paras 15 to 17, which read as follows;

15. The percepteur and Municipal Reserveur was there only representing the Municipal assembly. The right of litigation in the trial Court as also the appellate Court was in the Municipal Assembly, but it was being exercised by the Assembly through the Percepteur and Municipal Reserveur. When, therefore, on 9-6-1952 all rights of the Municipal Assembly became the rights of the Central Government

of the Union of India, the Percepteur and Municipal Reserveur became henceforth the representative of the Central Government of India for the purpose of this litigation.

16. The appeals were allowed and the question now is whether the Percepteur and Municipal Reserveur alone can prefer appeals to this Court against the decision of the Appellate Court, the District Judge of Chandernagore. I can see no reason for such conclusion. Where litigation is being carried on by any person in the name of an agent, the agent can certainly continue to carry till the last stage of litigation. But there appears to be nothing in authority or principle to justify the view that the principal cannot step into carry on the litigation in his own name.

17. In my opinion, it is, in such a case, open to the principal to carry on the litigation in his own name. Consequently, the Union of India, which was being represented by the Percepteur and Municipal Reserveur at the time the appeals were allowed, had the right to prefer second appeals against the appellate decree in its own name."

16. My attention is also drawn to a decision reported in *Mutharasu Thevar Vs. Mayandi Thevar and Others*, in support of the contention that the Principal has a right to revoke the vakalath given by the agent in favour of the advocate. In the said decision, the Madras High Court has laid down the circumstances as to when an agency becomes irrevocable. The relevant portion is at paras 6 and 7, which reads as follows;

6. The agent has been appointed only to expend for the litigation to be and already sponsored by him and to have the right in the future to mortgage or sell the property of the principals for reimbursement of expenses incurred by him. This is my opinion cannot create an interest in the subject matter, which is the sine qua non to make the power an irrevocable one. If any such interest were to be created for the benefit of the agent, it should be contemporaneously provided for in the instrument of agency itself and should not only be express but also be explicit. It should not give any room for doubt, nor could it be a matter of interpretation. In my opinion, an agency to be irrevocable should, therefore, create in the agent an interest in the subject matter contemporaneously with the document wherein such agency is created and it cannot be left to chance or guess or inference. Unless such a thing is available in the document itself, all such other powers given to the agent mainly for purpose of reimbursement of money"s spent by him for and on behalf of the principals. Even if such reimbursement should be by way of mortgage or sale of the properties, would in my opinion, create only a right incidental to such agency and would not amount to the creation of any interest in the agent over the subject matter of the litigation for the subject concerned. No doubt, an alleged irrational attempt on the part of the principals as in this case, to divest a right conferred on the agent incidentally for the purpose of reimbursement may give rise to a cause of action to the agent to sue the principals for damages and safe guard and secure his

right of recoupment by setting the process of law into motion expeditiously. But this is entirely a different legal incident, which has no bearing on the issue whether Ex.A-1, the power of attorney is by itself an irrevocable power within the meaning of Section 202 of the Indian Contract Act on the ground that it is coupled with interest.

7. Bowstead, in his book on "Agency", 12th Edition has stated the formula in such cases in these terms:

"Where the authority of an agent is given by deed or for valuable consideration, for the purpose of effectuating any security or of protecting or securing any interest of the agent, it is irrevocable during the subsistence of such security or interest. But, it is irrevocable merely because he has an interest in the exercise of it or has a special property in, or lieu for advances upon, the subject matter thereof..." Section 202 of the Indian Contract Act itself runs in these terms;

"Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."

Even on a reading of the Section, it cannot be said that in the instant case the agent has an interest in the subject matter of the agency. My attention was drawn to a decision of Venkata Subba Rao J. in Venkanna V. Achutaramanna, AIR 1938 Madras 542, where the learned Judge says that "the principle of Section 202 applies only to cases where authority is given for the purpose of being a security on the part of the security and not to cases where the interest of the donee arises afterwards and (incidentally;) in such cases, there is no authority coupled with an interest, but an independent authority and an interest subsequently arising." (The underlining (bracketed therein Ed.) is mine). Even so, a Division Bench of our High Court in Palani Vannan and Others Vs. Krishnaswami Konar and Others, laid down the test to be applied in such cases. The power in that case was also on very similar lines with the power, which is scrutinized by me. While reviewing such a document, the learned Judges observe:

"My view of the document is as follows; I think its primary object was to recover on behalf of the principal the fruits of his decree. It contained incidentally a provision for the enjoyment of the agent, Vedavyasachar, in order to realize that decree. It provides that his remuneration is to be one half of the proceeds. It contains an indemnity clause against any out of pocket expenses which he is entitled also to recover from the amount of the decree. But, the object of the power of attorney is not for the purpose of protecting or securing any interest of the agent. I think that part of the agreement is purely incidental"

In the present case, the power of attorney incidentally provides for an assurance that the agent can have recourse to the properties of the principal for advances made by him. The word "urudi" in my opinion having regard to the circumstances of this case, would rather mean assurance and cannot be equated to the expression "security". Therefore, the recitals in Ex.A-1 do not in my

opinion create an irrevocable agency in the agent entitling him to object to the - relief asked for by the principals in the lower Courts. What Ex.A-1 provides for is only the mode as to how the agent can realize his dues. No security is in fact created upon the execution of the instrument. No interest, therefore, is coupled with the agency."

17. It is to be noted here that the contention that the power of attorney is revocable or irrevocable has to be relegated to the suit as it needs some evidence and cannot be decided in these revision petitions. The Supreme Court while dealing with a case where a suit is filed in a representative capacity has laid down the guidelines in *Shri Rikhu Dev, Chela Bawa Harjug Dass Vs. Som Dass (Deceased)* through his *Chela Shiam Dass*, The Supreme Court while dealing with a case where a suit is filed in a representative capacity held as follows;

"This rule is based on the principle that trial of a suit cannot matter of the suit has devolved upon another during the pendency of the suit but that suit may be continued against the person acquiring the a person in a representative capacity and there is a devolution of the interest of the representative, the rule that has to be applied is Order 22, a consequence of death or for any other reason. Order 22, Rule 10 is not confined to devolution of interest of a party by death; it also office or is removed from office. In such a case the successor to the head of the mutt or to the manager of the temple may be substituted as rule means interest in the "property i.e., the subject-matter of the suit and the interest is the interest of the person who was the party to the suit.

It was, however, contended on behalf of the respondent that there was no devolution of the interest in the subject-matter of the suit who would be elected as mahant to succeed him.

The argument was that it was uncertain on the death of Som Dass as to who would become the mahantship on the death of a previous mahant by virtue of law or custom that there would be devolution of interest in the subject-matter. We see no force in this argument. We are of the view that devolution of the interest in the subject-matter of the suit took place when Shiam.

Som Das was sued in his capacity as a person who claimed Som Dass contended that he was lawfully appointed as mahant of the Dera. He never set up any claim which was adverse to the Dera or but in his capacity as de facto mahant. In other words, the suit was for possession and management of the Dera and the properties appertaining Dass as de facto mahant. The fact that it was after Som Dass died that Shiam Dass was elected to be the mahant of the Dera can make in the subject-matter of the suit devolved upon him. The subject matter of the suit was the interest of Som Dass in the Dera and as mahant subsequent to the death of Som Dass. And, as it was in a representative capacity that Som Dass was sued and as it was in the against Shiam Dass, Order 22, Rule 10 will apply. In *Thirumalai v. Arunachella* the court held that a succeeding trustee of a trustee

who filed a suit and thereafter died during its pendency was not legal representative of the predecessor in office. The court said that where some of the trustees die or retire during the pendency of a suit and new persons are elected to fill their place, it is a case of devolution of interest during the pendency of a suit and the elected persons can be added as parties under Order 22, Rule 10 notwithstanding that the period of limitation for impleading them had expired.

18. The successor Matadhipathi is challenging the alienations made by the power of attorney agent. The power of attorney agent has not filed the suit in his individual capacity. He is representing only the Matadhipathi. If he has acquired any rights or sold any property it is always subject to his pendency. The petitioners who wanted to come on record are certainly necessary and proper parties to the suit since the successor Matadhipathi is certainly a necessary party for adjudication of the matters. So also, the persons who purchased from the power of attorney holder are necessary parties for adjudication of the title as the suit is filed for partition. In view of my finding that they are necessary and proper parties without whose presence adjudication cannot be made, the lower Court has rightly ordered their impleading them.

19. The only grievance expressed by the learned counsel for the petitioners is that they have to be impleaded as defendants and not as plaintiffs. In support of his version, he has placed reliance on a decision reported in *Ram Gopal Sah Vs. Dharendra Nath and Another*, . The relevant portion at para 4 reads as follows;

"The above said view of the Chagla CJ is fully supported by the decision of the Calcutta High Court in the case of *Googlee Sahoo v. Premlal Sahoo* (1881) ILR 7 Cal 148 on which his lordship relied. Though Shri A. Mishra, the learned Advocate appearing for opposite party No. 2, contested the correctness of the view that no person should be added as a co-plaintiff when the plaintiff disputes the right of the person praying to be added as a co-plaintiff and there is a direct conflict between the plaintiff and the person to seek to be added as a co-plaintiff, he was unable to cite any authority in support of his contention. It is true that Order I Rule 10 CPC itself places on such specific limitation on the power of the Court to add a person as a co-plaintiff, but, in my opinion, it is a sound exercise of discretion not to add a person between whom and the existing plaintiff there is a direct conflict as a co-plaintiff because if he is joined as a defendant issue can be raised between the plaintiff and party newly joined. In agreement with Chagla C.J., I therefore, hold that the Court below acted illegally or with material irregularity in exercise of its jurisdiction when it ordered opposite party No. 2 to be added as a co-plaintiff when the plaintiff disputed her right to the decree which might be passed or to the property which is the subject matter of the suit. The order under revision, therefore must be set aside."

20. The contesting respondents have contended that they have been rightly impleaded as plaintiffs since they stepped into the shoes of the power of attorney holder as property was sold by him. It is also contended that the affidavit given

by the prior mahanth goes to show that the power of attorney holder has got right to execute the sale deeds and he is entitled to implead as 1st plaintiff in the place of the Mahanth. Adverting to the said contentions, I have already stated that when once Matadhipathi dies the successor Mahanth can be impleaded as per the Principles laid down by the Supreme Court referred to by me supra. The truth or validity of the sale deeds or alienations or execution of the power of attorney and the conduct of the power of attorney holder can only be decided in the suit. I confine myself only to the aspect of impleading the parties.

21. The question that has to be considered at this stage is whether there is any conflict of interest is there in between the successor Mathadhipathi and the power of attorney holder and the other purchasers claiming through him. One has to bear in mind that the Matadhipathi has filed a suit for partition. He is represented by the power of attorney holder. During the pendency of the suit or revocation of power of attorney, the petitioners have said to have purchased the property and therefore they are sought to be impleaded. They are having adverse interest to the mutt or Matadhipathi. The matadhipathi wants to contend that the claimants played fraud over the mutt in obtaining the sale deeds. The mis conduct is said to have been alleged even against the power of attorney holder. I have already stated that the power of attorney comes to an end the moment the executant dies. The role that can be played by the power of attorney holder after the death of the principal is only that of supporting alienations. The question of impleading him as party in the place of prior Matadhipathi does not arise. The principles mentioned in Ram Gopal's case (8 supra) clearly apply to the facts of the case. Moreover, the right to partition is going to be disputed by the persons who sought to be impleaded. They cannot continue the suit in the same form in view of their acquiring right and also in view of the fact that they have got an adverse interest. In that view of the matter, the succeeding mahanth alone can be allowed to continue the suit while others have to be impleaded as defendants, so that they may make claims against the Matadhipathi or mutt. I am of the considered view that they cannot be added as co-plaintiffs and can be added as only defendants. It is also contended that the power of attorney holder who sold the property is not a party to the suit and therefore the vendors can have only separate cause of action. Be that as it may, the Supreme Court has categorically stated that one of the objects, which should be kept in mind while exercising the power under Order 1 Rule 10 CPC is avoiding of multiplicity of proceedings. There is no need for the purchasers to be driven to file separate suits and they can be impleaded as parties. It is well laid principle of law as can be seen from *Satyadhyan v. Smt. Deorajin Debi* AIR 1960 SC 91 that the principle of *res judicata* applies also as between two stages in the same litigation to this extent that a Court whether the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. The Supreme Court has also observed at para 16 as follows;

"It is clear therefore that an interlocutory order which had not been appealed

from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order. A special provision was made as regards orders of remand and that was to the effect that if an appeal lay and still the appeal was not taken the correctness of the order of remand could not later be challenged in an appeal from the final decision. If however an appeal did not lie from the order of remand the correctness thereof could be challenged by an appeal from the final decision as in the cases of other interlocutory orders. The second Ss. did not apply to the Privy Council and can have no application to appeals to the Supreme Court, one reason the Supreme Court against an order of remand

The principle of *res judicata* does not apply to Order 1 and Rule 10 of C.P.C.

22. To sum up, I find that the Subordinate Judge at Tirupathi has rightly given a finding that the petitioners are necessary and proper parties. But, he went wrong by directing the succeeding Matadhipathi to be impleaded as 81st respondent. He ought to have impleaded him as successor plaintiff matadhipathi. Insofar as the other proposed persons are concerned, they are liable to be impleaded only as defendants. They cannot be impleaded as plaintiffs. The lower Court has committed a manifest error in ordering the successor mahant to be impleaded as 81st defendant whereas allowing the purchasers as plaintiffs as well as the power of attorney agents. Hence, a modified order is liable to be passed in this case. On the strength of the material and the principles laid down by the aforesaid decisions, the successor Matadhipathi is entitled to be impleaded as plaintiff whereas all others viz., purchasers are liable to be impleaded as defendants. Insofar as the validity of the power of attorney and its revocability and the conduct of power of attorney agent and his right to alienate the properties and the title of those purchasers are relegated to trial.

23. In the result, the order of impleading the purchasers as parties to the suit is confirmed. Insofar as arraying them as plaintiffs is concerned, the succeeding matadhipathi is ordered to be arrayed as plaintiff whereas all others are permitted to be impleaded as defendants. The lower Court shall permit the parties to carry out the amendments in the light of the orders passed in these revision petitions.

24. Accordingly, both the Civil Revision Petitions are partly allowed. Each party to bear their own costs.