
(1999) 08 AP CK 0096
In the Andhra Pradesh High Court
Case No : AAO No. 1603 of 1998

Mamidi Naga Damayanthi alias Jupudi Naga Damayanthi	APPELLANT
Vs	
Jupudi Padmavathi alias Mamidi Padmavathi and others	RESPONDENT

Date of Decision : 03-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, Order 9 Rule 13

Citation : (2000) 1 ALD 286

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

Bench : Single Bench

Advocate : Mr. C. Ramachandra Raju, for the Appellant; Mr. C.C.S. Sastry and Mr. Y. Rajasekhar, for the Respondent

Judgement

1. This Civil Miscellaneous Appeal is preferred by the 4th defendant being aggrieved by the judgement and order dated 12-11-1997 passed by the learned Subordinate Judge at Narsapur in IA NO...../1997 in (Sr. No.1320 of 1997). By the impugned order the Court below rejected the IA No...../1997 in (Sr.No.1320 of 1997) filed to condone the delay of 147 days in filing a petition to set aside the exports decree.

2. Learned Counsel for the appellant-4th defendant strenuously contended that the impugned order is illegal and without jurisdiction and the Court below has erred in rejecting the petition. On the other hand, learned Counsel for the respondents supported the impugned order. The appellant-4th defendant was brought on record as the LR of the original defendant No.3. The said defendant No.3 died leaving behind defendant No.4 wife and defendant No.5 son. They were brought on record as the LRs. of defendant No.3 vide order of the Court dated 13-6-1995 in IA No.184 of 1995. Undisputedly defendant No.5 contested the suit by examining himself as one of the witnesses in the suit. The present appellant-defendant No.4 simply remained ex parts after service of notice. The matter was contested by her son who was added as defendant No.5. On the basis of the entire evidence on record the Court below, by judgement and decree

dated 7-10-1996 decreed the suit OS No.120 of 1970. The respondents Counsel submitted that the appellant-defendant No.4 has been brought on record as LR of defendant No.3 and after she remained ex parte her son defendant No.5 contested the suit and accordingly the estate of defendant No.3 has been duly represented by defendant No.5 in OS No.120 of 1997 and it is only to drag on the proceedings the appellant has filed this petition to set aside the decree dated 7-10-1996 in OS No.120 of 1970. He further stated that the decree has been passed on merits after a full fledged trial and it is not an ex parte decree and therefore the appellant defendant No.4 could have filed an appeal instead of filing a petition to set aside the ex parte decree. Moreover, after the appellant was brought on record as defendant No.4, by filing memo she adopted the written statement tiled by the defendant No.3, and thereafter for the reasons best known to her she remained ex parte and it is only after passing of the said decree on 7-10-1996 she has filed the present application for setting aside the said decree, and that the Court below rightly rejected the application filed by the appellant-defendant No.4 for condoning the delay and as such the impugned order does not call for any interference. He also relied on some of the judgements in support of his contention that when the estate of the deceased is being effectively represented, non impleading the other LRs. would not affect the decree. On the other hand, learned Counsel for the appellant-defendant No.4 also relied on number of judgements contending that the present application to set aside the ex parte order and the application to condone the delay is maintainable.

3. From the contention of the parties, I find that few facts are squarely admitted on both sides. It is admitted that the plaintiff filed a suit for partition, in which her father Jupudi Kesava Rao is defendant No.3. He died during the pendency of the suit. His wife (defendant No.4-present appellant) and his son (defendant No.5) were brought on record as the legal representatives of the deceased defendant No.3. The appellant as defendant No.4 appeared in the suit and engaged a counsel. Thereafter, she remained ex parte and her son defendant No.5, who was also brought on record as the legal representative of deceased defendant No.3 contested the suit. He examined himself as DW1, and on appreciation of the entire evidence on record, the trial Court by passing a detailed judgment, passed a decree in favour of the plaintiff vide judgment and decree dated 7-10-1996 in OS No.120 of 1970. Thereafter, the present appellant filed IA (SR)No.1320 of 1997 for condonation of delay and another IA for setting aside the ex parte decree. The Court below has dismissed the application for condonation of delay by holding that such an application was not maintainable at the instance of defendant No.4. From these facts it is clear that the present appellant has come on record as defendant No.4 only as a legal representative of the deceased defendant No.3. But she remained ex parte. Her son who is also brought on record as the legal representative of defendant No.3 contested the matter, representing the estate of the deceased. Having regard to these circumstances, what has to be seen is whether the estate of defendant No.3 was

being effectively represented or not by defendant No.5, who contested the matter. Even if the present appellant were to be not brought on record as LR of defendant No.3, still the proceedings could go on with defendant No.5, who is on record as the legal representative of the deceased defendant No.3. In other words, what original defendant was required to be done, was done by his legal representative, the defendant No.5, who continued the proceedings by leading evidence on record, and on appreciation of the entire evidence, a decree was passed and such a decree is a decree passed on merits against deceased defendant No.3, notwithstanding that one of the legal representatives did not contest the suit for whatever the reasons. In similar circumstances, the Courts in India have held that the status of a legal representative of the deceased defendant, would be in no way different from the defendant, since such legal representative steps into the shoes of the deceased defendant. For instance, this principle of law was enunciated in the decision reported in *Ramgopal and Another Vs. Khiv Raj and Others*, . In this judgment, the High Court of Rajasthan held as under:

"It is settled law that the legal representatives are stepped into the shoes of the deceased-plaintiff or defendant, as the case may be, and they must adopt the position occupied by his predecessor plaintiff or defendant. The legal representatives, therefore, must proceed with the litigation from the stage where death of defendant or plaintiff had taken place. They are legally bound by the pleadings of his predecessors-in-interest in whose place they have been substituted. Hence, the legal representatives substituted under Order 22, Rule 4 CPC cannot set up a new case. The petitioners are bound by the proceedings taken so far against the deceased-defendant."

This Rajasthan High Court judgment also referred to the judgment of the High Court of Madras reported in *Kizhiakalathil Puthan Veetil Thavazhi Karnavan Vs. Manikat Variath Ukkali Varissiar*'s son Sankunni and Others, . In this judgment, the High Court of Maras has ruled as under:--

"A party who comes into the suit as the legal representative of another party cannot be allowed to depart from or vary or contradict the attitude taken up by the party whose legal representatives he is, it is obvious that if he were permitted to do so, it would be impossible to conduct any litigation where legal representatives come in."

The Hon"ble Supreme Court in the decision reported in *Smt. Gema Coutinho Rodrigues Vs. Bricio Francisco Pereira and others*, , also pointed out that as long as one of the heirs has been brought on record, who substantially represented the estate of deceased plaintiff, the suit does not abate. In the instant case, the estate of the deceased defendant No.3 is being effectively represented by defendant No.5, who has been brought on record as the legal representative of the deceased defendant No.3. Even if defendant No.4 remains ex parte, it would not have any consequence, since there could be a decree regarding the estate of the deceased defendant No.3 and in the instant case, ultimately the suit has

been decreed against deceased defendant No.3. So far as the deceased defendant No.3 is concerned, it cannot be said to be an ex parte decree. If there are several legal representatives, if some of them are not brought on record, that would not affect the merits of the decree. If that is so, defendant No.4, who is brought on record as the legal representative, for any reasons, she was not able to contest the suit, the decree passed, continues to be one OP merits against deceased defendant No.3 and it cannot be termed as an ex parte decree at all. If that so, Order 9, Rule 13 CPC would not be applicable. However, the learned Counsel for the appellant cited the judgment of the Supreme Court reported in Prakash Chander Manchanda and Another Vs. Janki Manchanda, , and contended that in the absence of a defendant, if the evidence of the plaintiff is recorded and ultimately decree is passed, it shall be construed to be as an ex parte decree only, and as such Order 9, Rule 13 CPC would be applicable. As I have already stated above, the facts of this case are slightly different. The case on hand is not the one in which defendant remained ex parte and evidence on the side of the plaintiff was taken into consideration. But in the instant case, defendant No.3 died and his legal representatives were brought on record, but one of the legal representative remained ex parte and another contested it. In such circumstances, there could be decree against the deceased defendant No.3, when the estate of the deceased defendant is effectively represented by any of one of the legal representatives, who is already on record. In such circumstances, as I have already stated above, the decree could be passed on merits notwithstanding that one of the legal representatives remained ex parte and it cannot be construed as an ex parte decree as against the original defendant. Thus, the judgment of the Supreme Court cited (supra) would not be applicable to the facts of this case. In the decision reported in Subramania Pillai Vs. Masterly, , the Hon"ble High Court of Madras has pointed out as under:

"The procedural law requiring representation will stand satisfied if there is substantial representation in the sense that all that could be done in defence was done by some one interested in the issue in the suit."

In the instant case, as I have already stated above, defendant No.5, who was brought on record as the legal representative of defendant No.3, has effectively represented the estate of the deceased and consequently there is a decree on merits against the estate of the deceased defendant No.3. Therefore, another legal representative of defendant No.3 who is the appellant herein as defendant No.4, being absent or remaining ex parte would not affect the merits of the case, since what all could have been done by the original defendant No.3 has been done by his son, who is brought on record as his legal representative. Therefore, the decree which was passed on 7-10-1996 in OS No. 120 of 1970 cannot be construed to be an ex parte decree for the purpose of Order 9, Rule 13 CPC and the appellant being one of the legal representative could not maintain the present application for setting aside the decree passed on merits, treating it as an ex parte decree. There are instances in which the number of legal representatives would be 15 or more and some of them may contest the suit as

the legal representatives of the deceased defendant. But some of them may not evince any interest at all for whatever the best reasons known to them and they may remain ex parte. If applications filed by such persons who remained ex parte, if treated as maintainable under Order 9, Rule 13, there would not be end to the litigation and it would consequently lead to unending prolonged litigation and that is not the intentment of the law at all. "Justice delayed is justice denied" is the often quoted statement. In this view of the matter, I do not find that there is any error of jurisdiction in the impugned order of the Court below in rejecting her application as not maintainable.

Accordingly, I pass the order as under:--

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