
(2000) 04 AP CK 0070
In the Andhra Pradesh High Court
Case No : CRP No. 3680 of 1996

Manthena Krishnam Raju (died) and others	APPELLANT
Vs	
Dadal Ramanaiah alias Rafiale (died) and others	RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 1, Order 32 Rule 10, Order 32 Rule 11, Order 32 Rule 12, Order 32 Rule 13

Citation : (2000) 3 ALD 710 : (2000) 3 ALT 781 : (2000) 2 APLJ 275 : (2001) 1 CivCC 127 : (2001) 2 RCR(Civil) 200

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : Mr. M. Adinarayana Raju, for the Appellant; Mr. A.V. Krishna Koundinya, for the Respondent

Judgement

1. The defendants in OS No.112 of 1991 on the file of learned Principal Subordinate Judge, Kakinda, filed this revision petition aggrieved by the order and decree dated 2-9-1996 made in IA No.1285 of 1991 in OS No.112 of 1991. The facts, which are not in dispute, are that one late Manthena Krishnam Raju filed the above suit through next friend of D. Subhash on 3-4-1991 for cancellation of registered sale deeds executed by the plaintiffs in favour of the defendants and delivery of possession of the schedule property with profits, along with an application under Order XXXII, Rule 15 CPC to permit D. Subhash to file the suit on behalf of the plaintiff as his next friend and also power of attorney holder. The plaintiff expired on 5-5-1991. The Court on 28-6-1991 ordered notice to the respondents in IA No.1285 of 1991 and registered the suit on the same date. The revision petitioners-defendants filed the counter in the above interlocutory application contesting that the suit filed by the power of attorney, without any power subsisting on the date of filing the suit, cannot file an interlocutory application and also cannot institute a suit. The said power of attorney was cancelled even prior to the filing of the suit and the allegation that the plaintiff was very old, senile and mentally infirm and was having the habit of

over drinking are all false, and that his health was in very good condition and the petition filed itself is not maintainable etc. Pending consideration of the above application, the legal representatives of the plaintiff were also brought on record on 15-4-1996 and in the present application only on 9-8-1996. The lower Court closed the petition stating that even though the Court ordered notice in the application to the respondents on 28-6-1991, on which date the suit was also numbered, without passing any speaking order, granting permission to D. Subhash to represent the plaintiff in the suit proceedings, and it has to be taken that such permission was granted ex parte. Apart from the same, the legal representatives of the plaintiff were brought on record on 15-4-1996 and in the interlocutory application only on 9-8-1996 and in the said circumstances, there is no point in further pursuing the present petition proceedings, especially when the evidence on record, which is adduced, in the absence of the respondents in spite of the death of the plaintiff, even prior to the respondents put in their appearance cannot be considered and a fresh enquiry is to be conducted eschewing the evidence, as no opportunity for them to participate in the enquiry was given and directed the respondents to file the written statement in the proceedings.

2. Questioning the same, the revision petition is filed.

3. Learned Counsel for the revision petitioners strenuously urged that the very approach of the Court below is erroneous and the Court has no jurisdiction to proceed with the suit. Once the plaintiff expired even prior to numbering of the suit, the principles enunciated under Order XXXII, Rule 15 CPC has no application to the facts of the case. He contended that when the Court issued notices in interlocutory application, on the said date, the plaintiff was no more and the Court cannot make any enquiry as contemplated under Order XXXII, Rule 15 CPC. The only option left to the Court is to reject the plaint as enquiry is not possible to decide whether the plaintiff on the date of filing of the suit is unsound mind or not. He also contended that the date on which permission granted, the plaintiff was no more. Therefore, legal representatives of the plaintiff cannot continue the said suit and the plaint is liable to be rejected on the date when the Court ordered notices in the interlocutory application. By mere impleading the legal representatives of the deceased plaintiff, the Court will not get the jurisdiction to proceed with the suit. Therefore, he prayed to reject the plaint as not maintainable. In support of his contentions, he relied on the following judgments:

1. Anasuyamma v. Subbareddi AIR 1943 Mad. 646 ;

2. Samalla Krishnamurthy Vs. Samala Sasila and Another, ;

3. Somnath Vs. Tipanna Ramchandra Jannu, .

4. On the other hand, learned Counsel for the respondents Mr. A.V. Krishna Koundinya supported the order impugned and argued that there cannot be any automatic abatement of the suit on the death of the plaintiff under Order XXXII,

Rule 1 CPC. The legal representatives can continue the suit and they were brought on record on 15-4-1996 and it is open for the revision petitioners to take all defences, which are available in the main suit. The revision petitioners, for the first time, taken the plea that the abatement of the suit, which plea has not been taken in the counter. Therefore, they are not permitted to raise this plea for the first time in the revision petition. He lastly contended that there is no error of jurisdiction in closing the interlocutory application and the lower Court has decided the matter basing upon the facts. There is no jurisdictional error committed by the lower Court and hence the revision petition itself is not maintainable. Therefore, he prayed for dismissal of the revision petition. In support of his contentions, he relied upon the following decisions:

1. Vantaku Appalanaidu and Others Vs. Peddinti Demudamma and Another, ;
2. Mohammad Arif v. Allah Rabbul Alamin and others, AIR 1982 SC 948;
3. Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, ;
- 4 Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, ;
5. FCI V. Yadav Engineer and Contractor AIR 1982 SC 1302 ;
6. Oruganti Bhaskara Rao and Others Vs. Angara Saibabu and Another, .

5. As stated earlier, the fact of institution of suit and death of the plaintiff even prior to issuing notice and numbering the suit are not in dispute. Equally the legal representatives of the deceased plaintiff were brought on record on 15-4-1996. Order XXXII, Rule 15 CPC reads as follows:

15. Rules 1 to 14 (except Rule 2-A) to apply to persons of unsound mind :--Rules 1 to 14 (Except Rule 2-A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons, who though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.

6, The power confers on the Court to permit the next friend to institute the suit on behalf of the person of unsound mind. Rules 1 to 14 which are applicable to institution of suit by a minor, are also made applicable for such proceedings. On the date when the Court granted permission on 28-6-1991, the plaintiff was no more. Therefore, the plaint suit has to be returned as no enquiry can be proceeded under Order XXXII, Rule 15 CPC. The lower Court issued notices in, the above application to the respondents and respondents filed a counter opposing the same. Enquiry can be dispensed with only in cases where the person is already adjudged as a lunatic or of unsound mind. In this case, it is not the case of any one that the plaintiff was adjudged to be a person of unsound mind. The Court has to conduct an. enquiry for the purpose of finding whether he is capable of protecting his interest without suing or being sued by reason of

unsoundness of mind or mental infirmity. On the date when such an application was taken i.e., 28-6-1991, the plaintiff was no more. Therefore, it is again for the Court to make an enquiry or permit the next friend to institute the suit on the relevant date. Though various case laws were cited, the nearest on the point is Somnath Vs. Tipanna Ramchandra Jannu, . With regard to the permission and the procedure the Court has to follow when a suit is presented by the next friend alleging that the plaintiff is to be of an unsound mind was dealt with at Page 281 of the above decision, which reads as follows:

"... When the plaintiff is an adult person and himself files the suit, the examination of the plaint has to be made in the light of the provisions which we have summarised above. When the plaint is complete with all the requirements of Order 7, it is admitted and process is issued. However, in the case of a plaint, which is presented on behalf of a person of unsound mind by his next friend, the representation by the next friend does not become effective for the purpose of admitting the plaint and issuing process against the defendant until the stage contemplated by Order 32, Rule 15 is reached. If the plaintiff is already adjudged by a Competent Court and the order is attached to the plaint by the next friend, he falls in the first part of Rule 15 of Order 32 and the provisions of Rules 1 to 14 immediately become applicable. If he is not so adjudged, as in the present case, until the Court finds him to be so on an enquiry contemplated by the second part of Rule 15 of Order 32, the provisions of Rules 1 to 14 do not kept extended, and there is no plaint properly presented so as to call upon the defendant by issuing process. On reading the provisions, we are of the view that in a plaint, which contains the statement that the plaintiff is a person of unsound mind and also further statement that he has not been yet so adjudged, the Court is at once called upon to give a finding after the enquiry as required by the second part of Rule 15 of Order 32. It is a part of the Court's duty to do so, as it is the other part of the Court's duty to examine the plaint and reject it under the provisions of Rule 11 of Order 7. If in this enquiry, which we are indicating, the Court comes to the conclusion that the plaintiff is not a person of unsound mind that will be a valid ground to reject the plaint, The powers of the Court to reject the plaint are contemplated by Rule 11, but since the grounds mentioned in that rule are not exhaustive, a finding of the above type would be a valid ground to reject the plaint. In view of the fact that a wrong person is suing on behalf of an adult person of sound mind, there is no need to issue process and call upon the defendant to defend."

7. A Division Bench of Madras High Court in Rangaswami Reddi v. Gopalaswami Reddiar (1978) II MLJ 564 at Page No.568 it held as follows:

".... It is settled by a series of decisions of this Court as well as other Courts that the responsibility casts on the Court under the provisions of the Code referred to above is very serious because the person concerned is denied his liberty to take action in his own way and some other person is imposed or foisted on him to take action purporting to be on his behalf. From one point of view, if the person

is not of unsound mind allowing another person to sue as a next friend on his behalf will be a total deprivation of the liberty of the person concerned to take care of his own interest and foisting on him another person to pursue a litigation which he himself might not have liked. On the other hand, if the person happens to be of unsound mind to deprive him of the opportunity of enforcing his remedies available under law by the interposition of a next friend will cause serious prejudice to his interest and may even deny him and deprive him of the means of livelihood or his source of income. Having regard to all these serious consequences which may flow in this behalf, the Court owes a duty to the person concern to conduct an enquiry for the purpose of satisfying itself whether the person is incapable of protecting his interest when suing or being sued by reason of unsoundness of mind or mental infirmity or not."

8. In *Anasuyamma 's case* (supra), the Madras High Court held during the pendency of application for leave to sue *informa pauperis*, the plaintiff died, the application to sue as pauper abates. In view of the same the Court held that the legal representatives cannot be brought on record and the application continued.

9. A Division Bench of this Court in *Samalla Krishnamurthy Vs. Samala Sasila and Another*, , held that in the absence of any express provision in the Rule as to the nature of the enquiry that should be conducted, it is not possible to say that the procedure adopted by the trial Court is not in conformity with the Rule, where the lower Court granted permission basing upon the supported affidavits filed under Order XXXII, Rule 15 CPC. The affidavits of three other persons belonging to the same village were also filed along with the petition. Therefore, the District Munsif was directed to register the case after hearing the learned Counsel. In those circumstances, the Division Bench of this Court held that it couldn't be said that the trial Court has not followed any procedure. But this Court also approved the law laid down by a Division Bench of Madras High Court in *Rangaswami Reddi v. Gopalaswami Reddiar* 1978 (2) MLJ 564 When without an enquiry what-so-ever, if the petition is ordered, the suit was not maintainable and the enquiry under Order XXXII, Rule 15 CPC is mandatory.

10. A learned single Judge of this Court in *Vantaku Appalanaidu and Others Vs. Peddinti Demudamma and Another*, , held that there is no automatic abatement of the suit under Order XXII, Rule 1 CPC on the death of the sole plaintiff. In the above circumstances, the suit filed by the plaintiff for partition was dismissed and the plaintiffs appeal against the decree to the learned District Judge and pending the appeal, the appellant died. But the appeal was disposed of as the said fact was not brought to the notice of the Court and passed a preliminary decree and later on, the plaintiffs wife and son filed interlocutory application requesting for passing a final decree after bringing them on record as legal representatives of the plaintiff and the said interlocutory application was allowed, while reiterating the contention that there will not be any automatic abatement of the suit under Order XXII, Rule 1 CPC.

11. All other cases cited by the learned Counsel for the respondents are the

cases where the suits are validly instituted and during the pendency of the suit, when the plaintiff died, whether the same amounts to abatement or not was considered and the same are not relevant for the purpose of deciding the issue on hand. The date on which the suit was instituted and whether the Court has got jurisdiction to entertain the suit or not is the issue in the present revision. As seen from the above, the plaint which is presented on behalf a person of unsound mind (person dead) by his next friend, which has become effective for the purpose of admitting the plaint and issuing process against the defendant as per Order 32, Rule 15 CPC, is 28-6-1991. The suit is instituted only on the said date when the Court granted permission to sue by an next friend and ordered notices in interlocutory application filed under Order XXXII, Rule 15 CPC. Once the defendant brought the same to the notice of the Court, it is the bounden duty of the Court to examine whether the suit as such was framed on 28-6-1991 is valid and can be proceeded further or not. If no enquiry as contemplated under Order XXXII, Rule 15 CPC was possible, as the plaintiff is no more, the Court will not get any jurisdiction to entertain the suit filed by the next friend on behalf of a dead person. Order XXXII, Rule 15 CPC., will not authorise the Court to grant permission to sue by next friend of a dead person. In such circumstances, the suit itself is defective and not maintainable as it is filed on behalf of a dead person. Therefore, mere impleading the legal representatives of the plaintiff subsequently will not cure the initial defect of entertaining the suit. In my considered view, the suit, when it was taken up for hearing on 28-6-1991 as not maintainable, which was instituted on behalf of the dead person, the appropriate course for the civil Court is to reject the plaint by sustaining the objections of the defendants when the interlocutory application was taken up for enquiry. The Court below instead of sustaining the objection, failed to exercise the jurisdiction vested in it and closed the interlocutory application stating that as the plaintiff is no more, no enquiry can be proceeded in the interlocutory application. Such a procedure adopted by the Court is not legal and is liable to be set aside. In view of the same, I see that the contention put forward by the learned Counsel for the revision petitioners/ defendants merits consideration and the same has to be upheld. Accordingly the revision petition is allowed. The impugned order passed by the Court below is set aside and the plaint, as filed by the plaintiff, is not maintainable and the same has to be returned to the plaintiffs. The interlocutory application filed by the plaintiffs is dismissed. However, any observation made herein will not deprive the plaintiffs, legal representatives of the deceased plaintiff, to file a fresh suit in accordance with law.

12. Accordingly, the revision petition is allowed. No costs.