

(1993) 08 AP CK 0025

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3683 of 1990

Sriramula Ramachandram and others

APPELLANT

Vs

Sriramula Bhoodamma and others

RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 1 Rule 3, Order 22 Rule 11, Order 22 Rule 3
Constitution of India, 1950 — Article 226

Citation : AIR 1994 AP 79 : (1994) 1 APLJ 219

Hon'ble Judges : Parvatha Rao, J

Bench : Single Bench

Advocate : Mr. M.R. Jamalla Reddy, for the Appellant; Mr. K. Raja Reddy, for R.R., for the Respondent

Judgement

1. The petitioners question the order of the learned District Munsif at Karimanagar in I. A. No. 112 of 1989 in I. A. No.410of 1988 in O.S. No. 684 of 1982 dated 8-8-1990 dismissing the said application made under O.1, R.10 of the CPC for impleading them as respondents 8 to 14 in "the above case". It is important to note that the said I.A.No. 112 of 1989 was preferred by the petitioners themselves because the order of the learned District Munsif discloses some confusion regarding the said fact.

2. The brief facts of the the case as could be culled out from the order of the learned District Munsif are as follows:--

Respodents 1 and 2 herein laid O.S. No. 684 of 1982 for partition. The 1st defendant in the said suit one Durgaiah died. Petitioners herein are his legal representatives. The 2nd plaintiff in the suit filed I.A. No. 191 of 1984 under R. 4 of 0.22 of the CPC on 24-10-1983 for bringing on record the petitioners herein as the legal representatives of the deceased 1st defendant and the said application was allowed by the learned District Munsif on 3-12-1984. According to the petitioners herein no notice was served on them before the said I. A. was orderd

or even thereafter. Whatever that be, as per the order of the learned District Munsif, after the said I.A. No. 191 of 1984 was allowed on 3-12-1984, the suit was adjourned from time to time for carrying out the amendment and for filing amended copy and ultimately as no steps were taken for amendment, the suit against the 1st defendant was dismissed as abated on 1-7-1985. Subsequently the other defendants were set ex parte and a preliminary decree was passed against the defendants on 29-4-1987. Though it is not clear from the order of the learned District Munsif or the record before me what the exact prayer in I.A. No. 410 of 1988 is, the learned counsel on both sides are agreed that it is an application made by the plaintiffs in the suit i.e., respondents 1 and 2 herein, for appointment of a Commissioner for measuring and partitioning the land in accordance with the preliminary decree. It is stated by them that a Commissioner was appointed in the said I.A. No. 410 of 1988. It is at that stage that the present LA. No. 112 of 1989 was preferred by the petitioners herein for adding them "as respondents 8 to 14 in the above case for the just and proper adjudication of the matter and to avoid the multiplicity of proceedings, by allowing this petition, in the ends of justice". In a brief order, after scantily narrating the facts, laconically the learned District Munsif dismissed the said I.A. in the following manner:

"When the orders were already passed with regard to bringing of legal representatives of deceased Defendant No.1, the present petition is not maintainable. If at all the party intends to bring the petitioners herein on record as legal representatives of the deceased Defendant No.1 he has to take steps to restore the main suit and to take steps to set aside the orders passed against the defendant No.1 on 1-7-1985. Under the above referred circumstances, the present petition is not maintainable and is devoid of merits and is liable to be dismissed.

Accordingly, the petition is dismissed.....".

3. In support of LA. No. 112 of 1989 the 1st petitioner herein gave his affidavit dated 27-1-1989. In that he states that the petitioners came to know about the filing of the partition suit only recently and that immediately after knowing about the same he applied for certified copy of the decree and the docket order in I.A. No. 191 of 1984, and that in the said I.A. they were made as parties to the suit but were not served with any notices to claim their rights in Survey No. 188 of Karimnagar proper by participating in the proceedings -- obviously land in the said Survey Number is one of the properties which forms the subject matter of the said suit for partition. He further states that after the suit against his father (the 1st defendant) abated and was dismissed, the Court appointed a Commissioner to divide the land in the said Survey No. 188 with metes and bounds and certain other suit schedule properties. He also states that the said land is in the joint possession of the petitioners and the respondents in the said I.A. He then submits that to avoid multiplicity of proceedings, they should be impleaded as they are necessary parties to participate in the matter while fixing

the boundaries and dividing the said land and to allot their due share and that otherwise they will be put to irreparable loss which cannot be compensated. The 1st respondent filed his counter stating that after the death of the 1st defendant the petitioners herein deliberately absented themselves and with a view to protract the litigation filed the present application after the Commissioner visited the spot. He also contends that the application is belated.

4. The learned counsel for the petitioners points out that the learned District Munsif failed to see that the suit was dismissed as abated against the 1st defendant on 1-7-1985 for the default of the plaintiffs and that as a matter of fact no notice was issued to them in I.A. No. 191 of 1984 preferred by the 2nd respondent herein. He submits that the petitioners cannot be found fault for the abatement of the suit and for the subsequent non-filing of any application for setting aside the abatement of the suit as against the 1st defendant and also for proceeding with the suit after substituting them as legal representatives of the 1st defendant. He submits that on the facts of the present case, there is no warrant for the learned District Munsif observing that "if at all the party intends to bring the petitioners herein on record as legal representatives of the deceased defendant No. 1 he has to take steps to restore the main suit and to take steps to set aside the orders passed against the defendant No. 1 on 1-7-1985". He further submits that as that is the only reason given by the learned District Munsif for dismissing their application for impleading them in the case, the impugned order of the learned District Munsif is without any basis and unsustainable in law and has to be set aside and that on the facts and circumstances of the case, the I.A. has to be allowed. On the other hand, the learned counsel for respondents 1 and 2 i.e., the plaintiffs in the suit, contends that I.A. No. 112 of 1989 is not maintainable because Order 1 Rule 10 of the C.P.C. is not applicable to applications. He submits that interlocutory proceedings are not attracted by S. 141 of the CPC as they are not original proceedings to which alone, according to him, Section 141 is attracted. He also submits that I.A. No. 112 of 1989 was made in I.A. No. 410 of 1988 for appointment of a Commissioner and therefore what is sought by the petitioners is only to implead them in that interlocutory proceeding relating to the appointment of a Commissioner. He therefore submits that I.A. No. 112 of 1989 is not maintainable in law. He also submits that without the setting aside of the abatement and in view of the long delay, the petitioners cannot be impleaded even though they have come forward to implead themselves on their own.

5. At the outset it has to be pointed out that the suit O.S. No. 684 of 1982 did not abate as against the deceased 1st defendant under sub-rule (3) of R. 4 of O.22 of the CPC because the facts narrated above disclose that the 2nd plaintiff in the suit filed I.A. No. 191 of 1984 for bringing on record the petitioners herein as legal representatives and the said application was allowed on 3-12-1984 itself -- from the order of the learned District Munsif dated 8-8-1990 it is seen that the suit was dismissed as abated as against the deceased 1st defendant on 1-7-1985 because of certain defaults on the part of the plaintiffs. Even after that a

preliminary decree was passed in the suit on 29-4-1987 and according to the petitioners herein that preliminary decree is also against the deceased 1st defendant. It is not necessary for me to consider in this Civil Revision Petition whether after LA. No. 191 of 1984 was allowed the suit could properly be dismissed as having abated against the deceased 1st defendant or whether it ought to have been dismissed against the legal representatives i.e., the petitioners herein brought on record because of the defaults on the part of the plaintiffs. If what the petitioners say is true, another significant fact is that the petitioners were not given notice before or after LA. No. 191 of 1984 was allowed. I will also not enquire into the question whether a preliminary decree in a partition suit could be passed without all the persons claiming shares were before the Court and when the suit was dismissed as abated against one of them and the legal representatives were not brought on record.

6. But one thing that is clear in this case is that the petitioners could not have filed an application for setting aside the abatement of the suit against the 1st defendant under any of the provisions under 0.22. Rule 9 of 0.22 enables only the plaintiff or the person claiming to be the legal representative of the deceased plaintiff to apply for an order to set aside the abatement -- the legal representatives of a deceased defendant are not so enabled. This question directly arose before the Calcutta High Court in the case of Provat Chandra Coomar and Others Vs. Rabindra Nath Coomar and Others, and P. C. Mallick, J., has held (at p. 292):

"that on the language of 0.22, R. 9, it is not possible to hold that the legal representative of a deceased defendant is entitled to make an application to set aside an abatement even if the suit is a partition suit".

The learned Judge further held as follows (at page 293) :--

"In my judgment the petitioners (heirs and legal representatives of a deceased defendant) are not entitled to apply to set aside the abatement of the suit as against the deceased defendant. There is no other provision in the Code giving power to a defendant to set aside an abatement. Indeed in ordinary cases there is no necessity to enable a defendant to set aside an abatement. An abatement of the suit affects the plaintiff prejudicially and the plaintiff is prevented from instituting a fresh suit on the same cause of action. Hence it is provided in 0.22, R. 9 that in suitable cases the Court will give relief to the plaintiff and save the suit by setting aside abatement. Setting aside an abatement enures to the benefit of the plaintiff and to the prejudice of the defendant in ordinary suits.....

There are however certain classes of suits in which a defendant is equally interested. Such are for example partition or administration suits. In such suits the decree passed enures not merely for the benefit of the plaintiff but for the benefit of the defendants as well. It is because of this that it is stated that in a partition suit everybody including the defendants are in the position of the plaintiff. If such a suit for partition abates by reason of the death of one of the

defendants, when the proceedings have far advanced and have reached almost the journey's end, is the Court powerless to save the suit if the plaintiff or his legal representative as the case may be refuses to apply to set aside abatement? In such cases even though the defendant has been given no power to make an application to set aside the abatement, the Court has inherent power to set aside abatement and enable the suit to be proceeded with. The Court should exercise this inherent power to save the parties, the trouble and costs of a second partition suit and traverse the grounds already traversed. That the Court has this inherent power and should exercise it in appropriate cases has been recognised by the Madras High Court and the Bombay High Court in cases to be noticed presently.

..... Even though the Court has inherent power to set aside an abatement, it would not enure to the benefit of the defendant or his legal representative in a partition suit having regard to the fact that the right to apply is time barred.

There is however the provisions of O.1, R. 10 of the Code which is very wide in its terms and which would enable the legal representative of a deceased defendant to be added as a party.....

..... This power is very extensive and there is no limitation curtailing or restricting the power of the Court to add parties under O.1, R. 10 of the Code of Civil Procedure. In exercise of the power under this rule, the Court has power and should exercise that power to save a partition suit which has abated."

The decisions of the Madras and Bombay High Courts relied upon by the learned Judge are in the case of M. Ramakrishna Reddi and Others Vs. Reddivari Narasimha Reddi, and in the case of Lakshmichand Rewa Chand v. Kachubhai Gulabchand (1911) ILR 35 Bom 393. In M. Ramakrishna Reddi and Others Vs. Reddivari Narasimha Reddi, , Ramesam and Madhavan Nair, JJ., set aside the abatement in a short order which is as follows:--

"In matters where a respondent's legal representative wishes to bring himself on the record, he ought to apply by petition under O.22, R. 4, Civil P.C. But he need not apply for setting aside the abatement, for it is the appellant's appeal that abates against him. When he is willing to come in after lime, he is obliging the appellant and is not seeking a favour at the hands of the Court. The petition is ordered; and the abatement of the appeal set aside."

But in Morasa Anjaiah Vs. Kondragunte Venkateswarlu (died) and others, a Division Bench of this Court relying on the judgment of the Supreme Court in Union of India (UOI) Vs. Ram Charan and Others, held as follows:--

"In view of this decision of the Supreme Court Union of India (UOI) Vs. Ram Charan and Others, , the judgment of the Madras High Court in M. Ramakrishna Reddi and Others Vs. Reddivari Narasimha Reddi, and the judgment of the Calcutta High Court in Provat Chandra Coomar and Others Vs. Rabindra Nath Coomar and Others, , in so far as they held that the Court has inherent power to

set aside the abatement, are no longer good law."

With respect to the Division Bench, I demur. The facts in Union of India (UOI) Vs. Ram Charan and Others, as observed by the Division Bench are : the respondent in the appeal before the Supreme Court filed a suit for recovery of money and that was decreed; during the pendency of the appeal against the said decree before the High Court of Punjab, the respondent died. Thereafter, the appellant (Union of India) before the High Court filed an application under O.22, R. 4 read with S. 151, C.P.C. to bring the legal representatives of the deceased respondent on record; the Punjab High Court dismissed the said application and the appeal; and in the further appeal preferred before the Supreme Court by the Union of India, one of the contentions urged on its behalf is that the Court itself has inherent power to add legal representatives to do full justice to the party. The Supreme Court did not find force in that contention coming from the appellant, and held as follows :--

" The Court is not to invoke its inherent powers under S. 151, C.P.C. for the purpose of impleading the legal representatives of a deceased respondent, if the suit had abated On account of the appellant not taking appropriate steps within time to bring the legal representatives of the deceased party on the record and when its application for setting aside the abatement is not allowed on account of its failure to satisfy the Court that there was sufficient cause for not impleading the legal representatives of the deceased in time and for not applying for the setting aside of the abatement within time."

I am of the view that that decision has no application to cases when the legal representatives of the deceased respondent in an appeal or a deceased defendant in a suit themselves come before the Court for bringing themselves on record as legal representatives of the deceased party or for impleading themselves in the place of the deceased party and seek the setting aside of the abatement of the appeal or the suit against the deceased respondent or the plaintiff as the case may be. I am persuaded to take this view because as observed by Mallick, J., in Provat Chandra Coomar and Others Vs. Rabindra Nath Coomar and Others, there is no provision in the Code enabling a defendant/respondent or the legal representatives of a deceased defendant/respondent to make an application to set aside an abatement. In the absence of any such provision, there is no reason why the inherent jurisdiction of the Court should be denied to them for relief in that regard. The position of a plaintiff or an appellant is different because a clear remedy is provided under R. 9 of O. 22 and it is in the context of that remedy that the decision of the Supreme Court in Union of India (UOI) Vs. Ram Charan and Others, is to be understood. The underlined portions of the extract of the decision of the Supreme Court reproduced above clearly support my view. However, in the present case this question does not directly arise.

7. In Morasa Anjaiah Vs. Kondragunte Venkateswarlu (died) and others, the question that has arisen for consideration before the Division Bench of this Court,

in their own words, is "whether a party to a suit or proceeding, who fails to bring on record the legal representatives under O.22, R. 4, or whose application under the said provision has been dismissed, can have recourse to the provisions of O.1, R. 10, C.P.C. to implead the legal representative of the deceased party". The question has not been whether the heirs or the legal representatives of the deceased defendant cannot have recourse to the provisions of O.1, R.10, C.P.C. to bring themselves on record. Even so, one of the principles deduced and formulated by the Division Bench in that case is as follows:--

"An administration/partition suit does not abate as a whole due to not bringing on record the legal representative of a deceased party (co-sharer/co-owner) as each party is in the position of the plaintiff and the heirs of the deceased co-sharer -- co-owner is a necessary party to the suit, he can come on record on his application under O.1, R. 10, C.P.C.".

In view of the fact that the suit in the present case is a partition suit, this principle formulated by the Division Bench clearly applies to the facts of the present case and therefore the application of the petitioners to implead themselves in I.A. No.410 of 1988 has to be allowed and the learned District Munsif erred in dismissing the I.A. being under a mistaken impression that they had to take steps to restore the main suit and to set aside the orders passed against the 1st defendant on 1-7-1985 and that they committed default in not taking the said steps. From the facts narrated, it is quite apparent that respondents 1 and 2 herein i.e., the plaintiffs in the suit were the defaulting parties. The petitioners cannot be penalised for the default of respondents 1 and 2 in allowing the suit dismissed as against the 1st defendant as abated, on 1-7-1985.

8. This is also supported by the rationale behind Rr. 3 and 4 of O.22 of the Civil Procedure Code. D.A. Desai, J., in N. Jayaram Reddy and Another Vs. Revenue Divisional Officer and Land Acquisition Officer, Kurnool, has stated that the basic principle underlying these Rules "is indisputably a facet of natural justice or a limb of audi alteram partem rule". He further stated as follows (at page 1402):--

"As a corollary to this rule it is provided in the CPC that where a party to the proceeding dies pending the proceeding and the cause of action survives, the legal representatives of the deceased party should be brought on record which only means that such legal representatives must be afforded an opportunity of being heard before any liability is fastened upon them. It may be that the legal representatives in a given situation may be personally liable or the estate of the deceased in their hands would be liable and in either case a decision one way or the other, adverse or favourable to them, cannot be recorded unless they are given an opportunity of being heard. Order 22, Rules 3 and 4 codify these procedural safeguards translating into statutory requirement one of the principles of natural justice."

If this is the rationale behind Rr. 3 and 4 of O.22, there can be no reason for

precluding the legal representatives of a deceased defendant from bringing themselves on record on their own initiative if they think it is to their advantage in a suit like a partition suit. That has been the approach of P. C. Mallick, J., of the Calcutta High Court in *Provat Chandra Coomar and Others Vs. Rabindra Nath Coomar and Others*, . P.N. Shanghai, J., has this to say in *N. Jayaram Reddy and Another Vs. Revenue Divisional Officer and Land Acquisition Officer, Kurnool*, as regards a decree against a dead person (at page 1397):

"The basic fact remains that a decree against a dead person is treated as a nullity because it cannot be allowed to operate against his legal representative when he was never brought on the record to defend the case. Any other view would not be possible or permissible for it would fasten on him a liability for which he did not have any hearing. So while the law treats such a decree as a nullity qua the legal representative of the deceased defendant or respondent, there is nothing to prevent him from deciding that he will not treat the decree as a nullity, but will abide by it as it stands, or as it may be modified thereafter on appeal. If a legal representative adopts that alternative or course of action, it cannot possibly be said that his option to be governed by the decree is against the law or any concept of public policy or purpose, or the public morality. It is thus a matter entirely at the discretion of the legal representative of a deceased respondent against whom a decree has been passed after his death to decide whether he will raise the question that the decree has become a nullity, at the appropriate time, namely, during the course of the hearing of any appeal that may be filed by the other party, or to abandon that obvious technical objection and fight the appeal on the merits..... An abandonment of a technical plea of abatement and the consequential dismissal of the appeal, is therefore a matter at the discretion of the legal representative of the deceased respondent and there is no justification for the argument to the contrary.....

But, as is equally obvious, it will not be fair to draw an inference as to the abandonment of such a plea of abatement unless there is clear, sufficient and satisfactory evidence to prove that the legal representative of the deceased respondent was aware of it and abandoned it wilfully."

This supports the proposition that the heirs or legal representatives of a deceased defendant can approach the Court for bringing themselves on record even though the suit has abated as against that deceased defendant because of the inaction or default of the plaintiff or plaintiffs in that suit.

9. When the legal representatives of a deceased defendant so approach the Court for impleading themselves, the Court has ample power and jurisdiction to implead them. In AIR 1940 215 (Privy Council) the Privy Council has held that it is open to the Judge in his discretion under O.1, R.10, to add as a party to the suit the representative of a person against whom the suit has abated for the purpose of giving effect to the rights of the parties and that the contention that the plaintiff's suit (an administration suit in this case) had abated as a whole is fundamentally mistaken. The Privy Council has further observed that it was

impossible to hold that the suit for administration came to an end by reason of abatement as against some defendants who had the same interest as the plaintiff and that though the plaintiff by reason of laches may be supposed in certain circumstances to lose his rights as against those defendants, it would be paradoxical to suppose that the plaintiff's laches deprived those defendants of their rights and that there was nothing in O.22 to take away their interest in the estate and that they could, so far as that order was concerned, have brought an administration suit of their own, notwithstanding any abatement of the plaintiff's suit. I am also supported by the judgment of D. A. Desai, J., in *Bhagwan Swaroop and Others Vs. Mool Chand and Others*, . Though in that case *Amarendra Nath Sen, J.*, the other learned Judge, expressed certain doubts, he did not press them to the point of dissent, and agreed to bring on record the heirs and the legal representatives of the deceased respondent who had also made an application for bringing themselves on record after the appeal abated as against the deceased respondent for the inaction of the appellant in not taking steps under R. 4 of O.22 read with R. 11. D. A. Desai, J., held as follows (at page 357):--

"Heirs of deceased respondent No. 1 then moved an application for being brought on record. If the application had been granted, the appeal could have been disposed of in the presence of all the parties. The difficulty High Court experienced in granting the application disclosed with great respect, a hypertechnical approach which if carried to end may result in miscarriage of justice. Who could have made the most serious grievance about the failure of the appellants to substitute the heirs and legal representatives of deceased respondent No.1. Obviously the heirs of deceased respondent No.1 were the persons vitally interested in the outcome of the appeal. They could have contended that the appeal against them has abated and their share has become unassailable. That is not their case. They on the contrary, want to be impleaded and substituted as heirs and legal representatives of deceased respondent No.1. They had absolutely no grievance about the delay in bringing them on record. It is the second respondent who is fighting both the appellants and the 1st respondent who wants to derive a technical advantage by this procedural lapse. If the trend is to encourage fair play in action in administrative law, it must all the more inhere in judicial approach."

10. It is also to be seen in this connection that the petitioners herein are entitled to bring themselves on record in their own right in view of their right, title and interest in the plaint schedule properties which devolved on them after the demise of the 1st defendant Durgaiah and which is subsisting in them at the time when the preliminary decree was passed and the Commissioner was appointed for the purpose of measuring and partitioning the plaint schedule properties in accordance with the preliminary decree. A lamed single Judge of this Court held in *Syed Mohiddin (died) and Another Vs. Abdul Rahim and Others*, that under O.1, R.10 of the Civil Procedure Code, even a third party to the suit can be added as defendant after the preliminary decree in a partition suit. This judgment of the

learned single Judge was approved by a Division Bench of this Court in R. A. Narasinga Rao v. Chunduru Sarada, AIR 1976 AP 226.

11. Only one other point raised by the learned counsel for the respondents has to be met. He contends that sub-rule (2) of R. 10 of O.1 of the CPC can be invoked only in the case of suits and not in the case of miscellaneous applications. He submits that the petitioners filed the present application for impleading themselves as respondents in I.A. No. 410 of 1988 which is an application for appointment of Commissioner. He further submits that S. 141 of the CPC can be of no avail to the petitioners because under the said Section, the procedure provided in the Code in regard to suits can be extended only to original proceedings and not to interlocutory proceedings. He relies on the decisions of the Privy Council in Thakur Prasad v. Sheikh Fakir-ullah, 22 IA 44 (PC) and of the Supreme Court in Dokku Bhushayya Vs. Katragadda Ramakrishnayya, wherein it was held that S. 141 of the Code can be invoked only in the case of original proceedings. The learned counsel for the petitioners, on the other hand, relies on the decision of the Supreme Court in Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another, wherein the Supreme Court referring to its decision in Munshi Ram Vs. Banwari Lal, observed as follows:--

"Though there is no discussion, this Court has acted upon the view that the expression "civil proceeding" in S. 141 is not necessarily confined to an original proceeding like a suit or an application for appointment of a guardian etc., but that it applies also to a proceeding which is not an original proceeding."

But all these cases deal with S.141 as it was prior to the Amendment Act, 1976. In Shakoor and etc. Vs. Jaipur Development Authority, Jaipur and etc., , N.M. Kasliwal, J., of the Rajasthan High Court (as he then was) held as follows dealing with S.141 of the Civil Procedure Code, after it was amended by the Amendment Act, 1976 with effect from 1-2-1977 (at page 22):

"The wordings of S.141 are clear to the effect that the procedure provided in this code in regard to suits shall be followed as far as it can be made applicable in all the proceedings. The words "as far as it can be made applicable" cannot be given a narrow interpretation. The procedure provided both for the trial of a suit or miscellaneous proceeding is meant for finding out the truth and to do justice. The procedure is always a handmaid of justice and full opportunity should be given to the parties to bring forth their case before the Court, unless such procedure is specifically prohibited under the law. So far as the explanation to S.141 is concerned the proceedings under O. IX have been included within the expression "proceedings", and any proceeding under Art. 226 of the Constitution has been specifically excluded. Thus, if proceeding under O. IX has been included then it does not mean that it would not include other miscellaneous proceedings. The only restriction in applying the procedure provided for the suits to the miscellaneous proceedings would be to see "as far as it can be made applicable".

If we consider the problem from another angle then also the result would be

same. The Court may ask the defendant to file the written statement first before passing any order on the application for temporary injunction. In such a case the plaintiff becomes entitled to file subsequent pleading under O.8, R. 9 itself and that being so I see no reason as to how the plaintiff can be denied his right to file a rejoinder in the case of proceedings for temporary injunction by resorting to the provisions of O.8, R. 9 read with S.141, C.P.C."

However, this question need not detain me because even if O.1, R.10 cannot be invoked, the petitioners can certainly rely upon the inherent powers of the Court under S.151, C.P.C. Even if the petitioners did not refer to S.151 in their application, the Court is not precluded from exercising its inherent jurisdiction in allowing the application of the petitioner. I am supported in this view by a judgment of this Court in Anymulasetti Venkateswara Rao Vs. Konduri Sivaiah, .

12. On the facts and circumstances of the case, I am therefore of the view that this Civil Revision Petition has to be allowed. Accordingly, the Civil Revision Petition is allowed with costs and the order of the learned District Munsif in I.A. No. 112 of 1989 dated 8-8-1990 is set aside and the petitioners are directed to be impleaded as respondents 8 to 14 in I. A. No. 410 of 1988 in O. S. No. 684 of 1982.

13. Revision allowed.