

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Civil Revision Petition No.2418 OF 2023

Between:

Gande Vishwa Madav Rao ... Petitioner/L.R of deceased plaintiff

And

1.Gande Laxmi Devi (died on 21.07.2007)
...Respondent No.1/Deceased Plaintiff

2.Gande Uday Bhaskar Rao ...Respondent No.2/Defendant

Civil Revision Petition No.2432 OF 2023

Gande Vishnu Madhav Rao ...Petitioner/Respondent
No.3

1.Puppala Chinthamani (died on 12.08.2022)
...Petitioner/Plaintiff No.2

2.Puppala Srinivas Rao

3.Puppala Sridhar Rao

4.Puppala Srikanth Rao ...Petitioners

5.Gande Laxmi Devi (died on 21.07.2007)
...Respondent No.1/Deceased Plaintiff

6.Gande Uday Bhaskar Rao ...Respondent No.2/Defendant

DATE OF JUDGMENT PRONOUNCEMENT : 26.09.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRP. No. 2418 of 2023

% Dated 26.09.2023

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And

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Respondent No.1/Deceased Plaintiff

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...Respondent No.2/Defendant

! Counsel for the Petitioner: Sri Suresh Shiv Sagar

^ Counsel for the Respondents: Sri K. Venu Madhav

>HEAD NOTE:

? Cases referred

1.AIR 2004 AP 498

2.AIR 1981 PH 130

3.AIR 1988 PH 123

4.AIR 1991 PH 303

5.(2010) 2 SCC 162

HON'BLE SRI JUSTICE K.SURENDER**CIVIL REVISION PETITION Nos.2418 & 2432 of 2023****COMMON ORDER:**

Civil Revision Petition No.2418 of 2023 is filed aggrieved by the order dated 22.06.2023 passed by the Senior Civil Judge, Jagtial, in IA.No.491 of 2007 in OS.No.129 of 2006, whereby the learned Senior Civil Judge, dismissed the said application filed by the petitioner herein to implead him as Legal Representative of deceased plaintiff Gande Laxmi Devi in the suit.

2. Civil Revision Petition No.2432 of 2023 is filed aggrieved by the order dated 22.06.2023 passed by the Senior Civil Judge, Jagtial, in IA.No.417 of 2007 in OS.No.129 of 2006, whereby the learned Senior Civil Judge, allowed the application filed by Puppala Chinthamani to bring her on record as Legal Representative of deceased plaintiff Gande Laxmi Devi in the suit.

3. Aggrieved by the common order passed in IA.No.491 of 2007 and IA.No.417 of 2007 in OS.No.129 of 2006, dated 22.06.2023 these Civil Revision Petitions are filed.

4. The petitioner herein who is the petitioner in IA.No.491 of 2007 is the adopted son of the deceased plaintiff Gande Laxmi Devi. Puppala Chintamani who filed IA.No.417 of 2007 is the sister's daughter of the deceased plaintiff Gande Laxmi Devi, in whose name

registered will deed dated 21.07.2003 was executed by the deceased plaintiff in respect of the suit schedule property, bequeathing the said property in her favour.

5. The suit OS.No.129 of 2006 was filed by the deceased plaintiff Gande Laxmi Devi for cancellation of the registered sale deed vide document Nos.2410/2006 & 2411/2006 dated 17.10.2006 and for declaration of title and perpetual injunction. Pending the suit, the plaintiff G.Laxmi Devi died on 21.07.2007. Accordingly, the petitioner in IA.No.417 of 2007, Puppala Chinthamani filed the said IA to permit her to be the legal heir under Order-22, Rule-3 and 5 of CPC as she is the testamentary heir by virtue of the will deed dated 21.07.2003 in respect of the suit schedule property. IA.No.491 of 2007 was filed under Order-22 Rule-3 of CPC by the petitioner herein to bring him as legal representative of the deceased plaintiff since he was the adopted son vide registered adoption deed dated 29.08.1986.

6. The learned Senior Civil Judge passed common order in both the IAs by dismissing IA.No.491 of 2007 filed by the petitioner herein and allowed IA.No.417/2007 filed by Puppala Chintha Mani.

7. The learned Senior Civil Judge conducted enquiry and examined witnesses PWs.1 to 3 on behalf of P.Chinthamani

(petitioner in IA.No.417/2007) and RWs.1 and 2 on behalf of Gande Vishwa Madhava Rao (petitioner in IA.No.491/2007) to determine the legal representative in the suit. Learned Senior Civil Judge found that the deceased plaintiff executed testamentary disposition which is a registered will deed dated 21.07.2003, as such, succession is not open to the adopted son. He also found that though there is no dispute regarding adoption of the petitioner in IA.No.491/2007 as adopted son, the same is not enough to bring him as Legal Representative of the deceased/plaintiff, in view of the registered will deed.

8. Learned Counsel appearing on behalf of the petitioner in IA.No.491/2007 would submit that the learned Senior Civil Judge has committed an error in disallowing the petitioner in IA.No.491/2007 to come on record though he is the adopted son. In fact, the Court below ought to have allowed both the IAs; and that the court below came to a wrong conclusion that the succession is not open to the adopted son when there is testamentary disposition by the deceased plaintiff in favour of Puppala Chinthamani.

9. He relied on the Judgment of this Court in **G.N.Kishore Reddy v. R.Venugopal Rao and others** ¹ wherein this Court had permitted all the legal representatives on record to be impleaded in

¹ AIR 2004 AP 498

the suit. It was held at para 21 to 23 of the said Judgment as follows;

*“21. With great respect to the learned Judge, I am of the view n that the said judgment does not represent correct position of law. In this regard reference may be made to the judgment of the Full Bench of the same High Court in **Mohinder kaur v. Piara Singh**². The purport of the same was explained by another Single Judge in **S.Charanjit Singh v. Bharatinder Singh**³, as under*

“A Full Bench of this Court in Mohinder Kaur v. Piara Singh, has held that determination fo the point as to who is the legal representative of the deceased plaintiff or defendant under Order 22, Rule 5 of the Civil P.C. is only for the purposes of brining legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicte and the inter se dispute between the rival legal representatives has to be independently tried and decided in separate proceedings: In view of this the proper course to follow is to bring all the legal representatives on record so that they couchsafe the estate of the deceased for ultimate benefit of the real legal representatives. This would also avoict delay in disposal of the suit.”

*22. The attention of the learned Single Judge, who decided **Raj Kumar Alias Rajinder Singh v. Bimla Kumari**⁴, does not appear to have been invited to the judgment of the Full Bench in Mohinder Kaur’s case (supra). When the effort under the various provisions of C.P.C. is to avoid multiplicity of proceedings, and for adjudication of the related disputes in the same proceedings, the parties cannot be driven to different Courts or to institute different proceedings touching on different facets of the same major issue. Such a course of action would*

² AIR 1981 PH 130

³ AIR 1988 PH 123

⁴ AIR 1991 PH 303

result in conflicting judgments and instead of resolving the disputes, they end up in creation, confusion and conflict.

23. What emerges out of the discussion in preceding paragraphs is that it is not necessary that in every case, a legal heir is entitled to be treated as legal representative also. The permission granted to represent the estate of a deceased party to a proceedings cannot be treated as a final adjudication on the rights, except where it is decided as a specific issue. All the claims relating to the property or subject matter need to be dealt within the same proceedings, instead of the parties being required to institute parallel or tangent proceedings.”

10. In the above said case, the Court permitted the step son of the deceased and also two others in whose favour the deceased executed a ‘will’ bequeathing the suit schedule property as legal representative. The facts of the case differ from the present case. In the case cited, the property therein was settled in one’s favour and ‘will’ executed in favour of two others. For the said reason, all the three were permitted to prosecute as Legal Representatives of the deceased.

11. In the present case, it is not the case of the petitioner in IA.No.491/2007 that the suit schedule property was settled in his favour. Admittedly, on trial, the Court found that though the petitioner was adopted son, the property in question was

bequeathed in favour of P.Chinthamani the petitioner in IA.No.417 of 2007.

12. The petitioner in IA.No.491/2007 who is the adopted son cannot lay claim on the property which was bequeathed in favour of Chinthamani. He can always question the 'will' executed in favour of P.Chinthamani in a separate proceedings.

13. In **Suresh Kumar Bansal v. Krishna Bansal**⁵ the Honouable Supreme Court held as under:

“20. It is now well settled that determination of the question as to who is the legal representative of the deceased plaintiff or defendant under Order 22 Rule 5 of the Code of Civil Procedure is only for the purpose of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited.”

14. In view of the aforesaid Judgment rendered by the Honourable Supreme Court, the petitioner (adopted son and petitioner in IA.No.491/2007) can always question the probate proceedings independently and cannot claim the correctness or otherwise about

⁵ (2010) 2 SCC 162

the will deed executed in favour of P.Chintamani (petitioner in IA.No.417/2007) in the present suit.

15. With the above observation, CRP.No.2418 of 2023 filed by the petitioner in IA.No.491/2007 stands disposed off and CRP.No.2432 of 2023 stands dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in this Revision Petition, shall stands closed.

K.SURENDER, J

Date: 26.09.2023

Note: L.R copy to be marked

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HON'BLE SRI JUSTICE K.SURENDER

CIVIL REVISION PETITION Nos.2418 & 2432 of 2023

Dt.26.09.2023

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