

SUPREME COURT OF INDIA

Devineni Tirupathirayudu

Vs.

Surapaneni Suramma (D) By Lrs.

C.A.Nos.2006-2007 of 2009

(B.N. Agrawal and G.S. Singhvi JJ)

30.03.2009

ORDER

1. Leave granted.

2. Respondent No.1, Surapameni Suramma, who is now represented by legal representatives, filed suit for partition and separate possession of half share in some of the properties enumerated in Schedules A and B to the plaint. Defendant no.4 - Devineni Rupanarayanarao got himself impleaded as part to the suit by filing an application under Order 1 Rule 10 of the *Code of Civil Procedure (CPC)*.

3. During the pendency of the suit, some of the defendants died and their legal representatives were brought on record. Defendant no.4 also died on 20.6.1992 but his legal representatives were not brought on record and without even bringing this fact to the notice of the trial Court, the plaintiff (respondent no.1 herein) and defendant nos. 2, 6, 7 and 13 filed a compromise petition under Order 23 Rule 3 read with Section 151 CPC and prayed that the suit be decreed in terms of the compromise. In that petition, the plaintiff gave up defendant nos. 9 to 12 and 14 to 17. By an order dated 30.6.1992, the trial court decreed the suit in terms of the compromise. Soon thereafter, the appellants herein filed two petitions, one under Order 22 Rule 4 read with Section 151 CPC for being brought on record as legal representatives of defendant no.4 and the other under Order 9 Rule 13 read with Section 151 CPC for setting aside decree dated 30.6.1992. By two separate orders dated 14.9.1992, the trial Court dismissed both the applications. Civil Revisions filed by the petitioners were dismissed by the High Court with liberty to them to pursue other legal remedies.

4. We have heard learned counsel for the parties.

5. It is not in dispute that defendant no.4 died on 20.6.1992 and his legal representatives were not brought on record. It is also not in dispute that the trial Court decreed the suit on 30.6.1992 in terms of the compromise petition without being apprised of the factum of the death of defendant no.4. In this view of the matter, the only course open to the legal representatives of defendant no.4 (appellants herein) was to apply for recall of the

compromise decree. They could not have filed independent suit challenging the compromise decree in view of the bar contained in Order 23 Rule 3A of CPC. However, without appreciating the legal position in correct perspective, the trial Court dismissed the applications filed by the appellants for their impleadment as parties and for setting aside the compromise decree and the High Court dismissed the civil revisions filed by them.

6. Accordingly, the appeals are allowed, the impugned orders and the compromise decree are set aside and the suit is restored to its original file. The trial court shall now proceed in accordance with law.

7. Let hearing of the suit be expedited.