

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4832 OF 2022
[Arising out of SLP (C) No. 13332 OF 2021]

R. KRSNA MURTHI

APPELLANT(S)

VERSUS

R. R. JAGADESAN

RESPONDENT(S)

O R D E R

DINESH MAHESHWARI, J.

Leave granted.

We have heard the appellant appearing in person and the learned counsel appearing for the sole respondent.

Shorn of unnecessary details, the relevant aspects of the present matter are that the appellant herein had been the power of attorney holder of his mother, who had filed the subject suit for declaration and perpetual injunction and alternatively, for declaration and recovery of possession against the respondent. The suit was being prosecuted by the appellant as the power agent of the plaintiff. The said plaintiff, mother of the appellant, expired on 10.01.2020. Thereafter, the appellant moved an application, being I.A. No. 1 of 2020, seeking his substitution as legal representative of the deceased plaintiff with the assertion that the plaintiff, his mother, had executed a Will dated 13.06.2016 in his favour with respect to all her estate and the said Will was registered with the Sub-Registrar Office, Perambalur.

This application was considered by the learned Sub-ordinate Judge, Perambalur in the order dated 29.03.2021, wherein the submissions on behalf of the defendant-respondent were taken into consideration that the appellant was not the only legal heir of the deceased plaintiff; and that the deceased had another son and one daughter and without impleading them, the appellant was not entitled to proceed further. The learned Trial Judge was of the view that from the Will itself, existence of other son and daughter of the deceased plaintiff was evident; and that the execution and attestation were not the questions to be decided at the given stage.

Having regard to the factum of existence of other legal heirs of the deceased plaintiff, the learned Trial Judge straightway came to the conclusion that the application I.A. No. 1 of 2020 moved by the appellant for substitution was required to be dismissed and ordered accordingly.

The appellant preferred a revision petition before the High Court against the order aforesaid. The High Court proceeded to dismiss the said revision petition on the consideration that the petitioner i.e., the present appellant, ought to have taken steps for impleading the other legal heirs of the late plaintiff either as co-plaintiffs or as defendants to enforce his right over the property in question.

The order aforesaid has been questioned by the appellant before us, *inter alia*, with the submission that the Trial Court and High Court were not justified in rejecting the prayer made by the appellant for his own substitution as the legal

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representative of deceased plaintiff and in any case, the application could not have been rejected on the grounds taken and on the reasons assigned by the learned Trial Judge and approved by the High Court.

Learned counsel for the respondent has attempted his best to support the orders impugned, again and essentially with the submissions that at the given stage and in view of the factual aspects involved, other legal heirs of the deceased plaintiff could not have been left out from being impleaded as her legal representatives in the subject suit.

Having examined the matter in its totality and having given thoughtful consideration to the rival submissions, we are unable to approve the orders impugned.

Leaving aside any other aspect of the matter, it is but apparent that the appellant is admittedly the son of the deceased plaintiff. Thus, his entitlement, whether by way of testamentary succession or non-testamentary succession, as being the legal heir of the deceased plaintiff cannot be denied. That being the position, the application made by him for substituting himself as the legal representative of the deceased plaintiff could not have been declined by the Trial Court.

In this regard too, it would be relevant to point out that if any inquiry was required to be made, the Trial Court could have adopted the course envisaged by Rule 5 of Order XXII of the Code of Civil Procedure, 1908 but, in any case, the application made by the appellant could not have been dismissed altogether.

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That being the position, we set aside the orders impugned and restore the said application for re-consideration by the Trial Court in accordance with law.

The appeal is allowed in the above terms. No order as to costs.

.....J
(DINESH MAHESHWARI)

.....J
(ANIRUDDHA BOSE)

NEW DELHI;
JULY 21, 2022.

ITEM NO.6

COURT NO.13

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No. 13332/2021

(Arising out of impugned final judgment and order dated 26-05-2021 in CRPPD No. 1158/2021 passed by the High Court of Judicature at Madras)

R. KRSNA MURTII

Petitioner(s)

VERSUS

R. R. JAGADESAN

Respondent(s)

(PETITIONER-IN-PERSON MATTER

IA No. 107513/2021 - EXEMPTION FROM FILING O.T.

IA No. 107511/2021 - PERMISSION TO APPEAR AND ARGUE IN PERSON)

Date : 21-07-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Petitioner-in-person

For Respondent(s) Mr. G. Balaji, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

IA No. 107511/2021 by the petitioner seeking permission to appear and argue in person is allowed.

The appeal is allowed in terms of the Signed Reportable Order.

No order as to costs.

All pending applications stand disposed of.

(SHRADDHA MISHRA)
SENIOR PERSONAL ASSISTANT

(RANJANA SHAILEY)
COURT MASTER (NSH)

(Signed Reportable Order is placed on the file)