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R. KRSNA MURTHI

v.

R. R. JAGADESAN

JULY 21, 2022

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(Civil Appeal No. 4832 of 2022)

[DINESH MAHESHWARI AND ANIRUDDHA BOSE, JJ.]

Code of Civil Procedure, 1908 – Legal representative – Substitution of – Appellant was the power of attorney holder of his mother who filed a suit – Suit was being prosecuted by the appellant as the power agent – Appellant’s mother (plaintiff) expired – Appellant sought his substitution in the suit as a legal representative – The said application was dismissed by the trial Court after taking into consideration that there were other legal heirs of the deceased and without impleading them, the appellant was not entitled to proceed further – High Court dismissed the revision petition filed against the order of trial Court – On appeal, held: 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 legal heir to deceased cannot be denied – If any inquiry was required to be made, it could have been made u/Or.XXII, r.5 of CPC by the trial Court, but the application made by the appellant could not have been dismissed altogether – Impugned orders set aside and application restored for reconsideration by the trial Court.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4832 of 2022.

From the Judgment and Order dated 26.05.2021 of the High Court of Judicature at Madras in CRP (PD) No. 1158 of 2021.

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Petitioner-in-person.

G. Balaji, Adv. for the Respondent.

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The Order of the Court was passed by

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DINESH MAHESHWARI, J.

1. Leave granted.

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

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3. 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.

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4. 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.

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5. 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.

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6. 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

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A of the late plaintiff either as co-plaintiffs or as defendants to enforce his right over the property in question.

7. 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 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.

8. 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.

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

10. 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.

11. 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.

12. 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.

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