

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.1239 of 2015

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10.04.2015

Between:

Madam Vidhyavathi and others

...Petitioners

And

A.Veera Setty and others

...Respondents

Counsel for the petitioners: Mr.A.Sekhar Reddy

for Mr.M.Venkat Narayana Reddy

Counsel for respondents: --

The Court made the following:

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ORDER:

This civil revision petition arises out of the order, dated 31.10.2014 in I.A.No.216 of 2014 in O.S.No.648 of 2007 on the file of learned X Additional District Judge, Ranga Reddy District at L.B.Nagar.

I have heard the learned counsel for the petitioners and perused the record.

The petitioners filed the aforesaid suit for partition and separate possession of their shares therein. When the trial began, the petitioners filed the aforesaid I.A. under Order XVIII Rule 1 C.P.C. to direct defendant No.17 i.e., respondent No.17 to lead the evidence first so that the petitioners will lead rebuttal evidence. This application was dismissed by the lower Court by the aforesaid order. Aggrieved thereby, the petitioners filed this civil revision petition.

Under Order XVIII Rule 1 C.P.C., the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin. In the instant case, it is not the pleaded case of the petitioners that respondent No.17 has admitted the facts alleged by them in the suit. On the contrary, he has specifically denied the claim of the petitioners for partition. Besides such denial, respondent No.17 has also taken the plea that there was an earlier partition. Based on the respective pleas, the lower Court has framed the issues, which read as under:

- “1. Whether the document dated 4.5.1986 styled as a deed of partition is true, valid and binding on the parties to the suit?
2. Whether the plaintiffs are entitled to the preliminary decree as prayed for?
3. Who are entitled to the shares in the schedule property? What are their shares?
4. To what relief?”

As rightly opined by the lower Court, the initial burden is on the petitioners to substantiate their case with reference to the evidence that they are entitled to passing of a preliminary decree. As respondent No.17 pleaded that there was an earlier partition under document, dated 04.05.1986, he may, in his turn, adduce evidence to substantiate his claim. Even if respondent No.17 could not discharge the burden placed on him regarding the past partition, that will not automatically entitle the petitioners to the passing of a preliminary decree unless they adduce positive evidence on their side. In this view of the matter, the provisions of Order XVIII Rule 1 C.P.C. would not, in strict terms, apply to the facts of this case. The lower Court has, therefore, rightly dismissed I.A.No.216 of 2014.

For the aforementioned reasons, the Civil Revision Petition is without any merits and the same is accordingly dismissed.

As a sequel to dismissal of the Civil Revision Petition, C.R.P.M.P.No.1688 of 2015 filed by the petitioners for stay shall stand dismissed as infructuous.

(C.V.NAGARJUNA REDDY, J)

10th April, 2015

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