

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.1253 OF 2015

ORDER:

Heard the learned counsel for petitioners and the learned counsel for respondents.

2. The petitioners herein are defendants 1 and 2 in O.S.No.151 of 2010 on the file of the Court of I Additional Chief Judge, City Civil Court at Secunderabad (for short, trial Court). The said suit was filed by the respondents herein, who are the plaintiffs, for partition and separation possession of the suit schedule property. In the said suit, the petitioners filed I.A.No.1531 of 2011 seeking to reject the plaint on the ground that there was no cause of action subsisting, barred by limitation, under valuation of suit and non-payment of sufficient court fee. A counter affidavit was also filed by the respondents. The trial Court, by its order dated 27.10.2014, dismissed the said application, challenging which, the present Civil Revision Petition is filed.

3. The case set up by the petitioners is that the suit schedule property was already divided by metes and bounds among respondent Nos.1 to 3 and husband of respondent No.4 and father of respondent Nos.5 to 8 as per compromise decree in O.S.No.164 of 1991 dated 16.11.1991, very much prior to amendment of the Hindu Succession Act and the said partition was acted upon. The respondents got their share in the form of cash and jewellery at the time of their marriages and, knowing fully well about the partition, they filed the above suit. The petitioners also stated that since the petitioners were not in joint possession of the property, the payment of Rs.200/- is not a sufficient Court fee and the suit is also barred by limitation.

4. The trial Court, after hearing both sides and going through the pleadings of the parties, observed that whether the respondents, as married daughters, are entitled for a share in the joint family property is

to be decided in the main suit. Similarly, whether by virtue of the compromise decree in O.S.No.164 of 1991, the respondents are barred from filing the present suit for partition is also to be examined after full trial. In respect of limitation also, it was held that it is a mixed question of law and fact. Similarly, the contention of the petitioners that the Court fee was insufficient was also negatived. I am of the opinion that the order passed by the trial Court is proper in the facts and circumstances of the case and it does not warrant any interference.

5. Hence, the Civil Revision Petition is dismissed at the admission stage. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAMALINGESWARA RAO, J

Date: 03.11.2015
TJMR