

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.2379 of 2015

Date: 31-12-2015

Between:

Jangala Anantha Ramulu

.... Petitioner

AND

Galam Varalakshmi and 6 others

.... Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.2379 of 2015

ORDER:

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The petitioner is the proposed 6th defendant in O.S.No.1 of 2014 on the file of XVI Additional District Judge, Nandigama, Krishna District. The suit was filed by the respondents 1 and 2 herein seeking partition and separate possession of their share in the property. In the suit, the petitioner herein filed I.A.No.978 of 2014 seeking his impleadment as 6th defendant on the ground that his mother Seshamma is having 1/5th share in the plaint schedule property being a daughter of original owner Galam Subbaiah. She died intestate and his father also died. He is the only son entitled to claim 1/5th share of his mother. The respondents filed a counter stating that the mother of the petitioner died on 20-12-2002 and during the life time all the daughters of Subbaiah did not claim any share in their property as their marriages were performed by the said Subbaiah. The joint family of Subbaiah was dissolved on 21-06-1982. As on the date of death of Subbaiah, there is no right to

property to the daughters in the joint family. The Amendment Act 2005 has no retrospective application.

The trial Court dismissed the application with the following observations:

“.....Here in this case admittedly the mother of petitioner by name Seshamma died on 20-12-2002 i.e. almost three years prior to the commencement of the Amendment Act, 2005. In addition to that, the original owner of the schedule property Subbaiah died on 21-06-1982 by which date the joint family would be dissolved on other coparceners. The said death of Subbaiah is also long prior to coming into force of section 6 as amended in 2005, therefore, the mother of petitioner herself not having any right by the date of her death. Therefore, the petitioner cannot make claim through his mother who had no right in the coparcenary property by the date of her death, therefore, the petitioner is neither a proper party nor a necessary party to the suit. Without his presence in the suit, the suit can be effectively and completely be adjudicated. Point answered accordingly....”

Learned counsel for the petitioner submits that even assuming that Section 6 of the Hindu Succession Act has no application, the mother of the petitioner will be having a share in the share of the property of Subbaiah and the said share would devolve on the proposed 6th defendant.

In spite of service of notices on the respondents, none appeared for the respondents.

Admittedly, the petitioner herein is grandson of Subbaiah being the son of the daughter of Subbaiah. The suit is filed for partition. Merely because the application for impleadment of a party is allowed, the party will not get any right in the property. The rights of the parties have to be adjudicated in the main suit itself. The suit

is of the year 2014 and it is premature to decide the entitlement of the petitioner. In the circumstances, no prejudice is caused to the existing parties in the suit for partition by impleading the proposed 6th defendant.

In view of the same, the order dated 24-04-2015 in I.A.No.978 of 2014 in O.S.No.1 of 2014 passed by the learned XVI Additional District and Sessions Judge, Nandigama, is set aside and the said application is allowed. The Civil Revision Petition is allowed accordingly. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 31-12-2015

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