

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

CMA No.718 of 2015

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JUDGMENT:

This appeal is filed aggrieved by the order dated 26.08.2015 passed in IA.No.2296 of 2013 in OS.No.729 of 2013 by the III Additional Chief Judge, City Civil Court, Hyderabad, wherein the Court below granted ad-interim injunction in favour of 1st respondent herein/petitioner, restraining the appellants/respondents 3, 7 & 8 from alienating the suit schedule property.

Learned counsel for the appellants submits that during the life time of Satyanarayanji Gilda, there is prior partition, as such, the suit itself is not maintainable and that with regard to the same though specific plea is raised by the appellants in the counter filed before the Court below, the same is not considered by the Court below.

On the other hand, learned counsel for the 1st respondent supported the impugned order stating that since no evidence is produced regarding prior partition as claimed by the appellants, the trial Court has granted injunction to avoid multiplicity of proceedings and to see that third party rights are not created during the pendency of the suit.

It is to be seen that though the appellants contended in their counter filed before the Court below that there was prior partition, the same was not considered by the Court below as no partition deed or document is produced by the appellants evidencing prior partition and the Court below presumed for the purpose of the IA that there was no partition among the parties. The Trial Court also

observed the conduct of the 7th respondent before the Court below in transferring the suit property in favour of his wife. The trial Court also found prima facie case, balance of convenience in favour of respondent No.1 herein/petitioner. It is also observed by the Court below that if the properties are being alienated from time to time, new parties would come into picture and may claim their respective rights. Keeping in view the aforesaid findings the Court below has granted injunction in favour of respondent No.1/petitioner. Though, plea is taken even in the appeal that there is prior partition, no document is filed along with the appeal to show that there exists prior partition. In view of the same, I do not see any error or infirmity in the order passed by the Court below warranting interference of this Court in exercising appellate jurisdiction under order-43, Rule-1 of CPC.

Accordingly, the appeal is dismissed. However, the trial Court is directed to dispose of the suit as expeditiously as possible without being influenced by the observations made by this Court in this appeal, since the said observations are only for the purpose of testing the order passed in the IA. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the appeal, shall stand closed.

A.RAJASHEKER REDDY, J

18.12.2015
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