

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

Civil Revision Petition No.4126 of 2014

Dated 23rd January, 2015

Between:

B.Venaktesh

...Petitioner

And

Smt.B.Pushamma and others

...Respondents

Counsel for the petitioner: Sri I.Gopala Reddy

Counsel for the respondents: ----

The Court made the following:

ORDER:

This civil revision petition arises out of order, dated 10.10.2014, in I.A.No.840 of 2014 in O.S.No.63 of 1988, on the file of the learned I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.

Respondent No.1 filed O.S.No.63 of 1988 for partition and separate possession of agricultural lands admeasuring Acs.7.60 guntas situated in Survey Nos.31, 33, 34/1, 35 and 5 of Sultanvalva, Champapet Gram Panchayat, Saroornagar Mandal, Ranga Reddy District. A preliminary decree was passed on 25.03.1996 for partition and allotment of 1/5th share to the plaintiff/respondent No.1 by metes and bounds with separate possession of 'A' & 'B' schedule properties. Feeling aggrieved by the said judgment and decree, the petitioner and respondent Nos.2 and 3 carried the matter in appeal. The appeal was allowed on the short ground that the mother of respondent No.1 was not added as a party to the suit. However, during pendency of the LPA filed by respondent No.1,

her mother died and this Court has disposed of the LPA by directing that the share of the mother of respondent No.1 will be apportioned among the parties during the final decree proceedings.

While the final decree proceedings are pending, the petitioner and respondent Nos.2 and 3 have filed I.A.No.840 of 2014 for modification of the decree by incorporating the words that respondent No.1/plaintiff is entitled for 1/5th share available for parties as on the date of filing of the suit in terms of the findings rendered on Issue No.1. This application was dismissed by the trial Court. Feeling aggrieved by the same, one of the unsuccessful petitioners in the IA has filed this civil revision petition.

At the hearing, the learned counsel representing Sri I.Gopala Reddy, learned counsel for the petitioner, invited this Court's attention to the findings rendered by the trial Court in its judgment, dated 25.03.1996, in O.S.No.63 of 1988 under Issue No.1. These findings are as follows:

“...There is no clear evidence on record as to what is the open land available for partition. As already stated defendant No.1 has alienated most of the lands under the general power of attorney executed by late Yadagiri and Ramulamma during the life time of Yadagiri and Ramulamma and also subsequent to their death for the construction of Yadagiri theatre. Therefore, the plaintiff cannot be permitted to contend that she is entitled for share in all the properties held by late Yadagiri. The law helps diligent but not negligent. The plaintiff ought to have not waited till 1987 for filing a suit for partition. Having waited for 1987 she cannot contend that she is entitled for share in all the lands held by Yadagiri. She cannot be permitted to blow hot and cold. She cannot contend that she is entitled to share in all the properties held by late Yadgiri as well as the Cinema theatre which was constructed after the death of Yadagiri.”

The learned counsel contended that contrary to the findings as reproduced above, the decree was passed by allowing 1/5th share in all 'A' & 'B' schedule properties. According to the learned counsel, 'B' schedule property relates to a cinema theatre which was constructed after the death of the father of respondent No.1 and that the same was not available for partition at the time of filing of the suit.

As rightly observed by the lower Court, the preliminary decree was

subject matter of further appeals before this Court. If there is any conflict between the judgment and the decree, the petitioner was not precluded from raising the same in appeals and getting the decree modified. Having allowed the decree to become final, the petitioner cannot be permitted to approach the lower Court for amendment of the decree. Indeed, with the confirmation of the preliminary decree in appeals, the trial Court cannot be permitted to amend the same. Even if there is a conflict between the judgment and the decree as pleaded by the petitioner, he is not diligent in getting the decree corrected in appeals. In this view of the matter, the lower Court has not committed any error in rejecting the IA filed by the petitioner and respondent Nos.2 and 3 for correction of the decree.

For the above-mentioned reasons, the civil revision petition is dismissed.

As a sequel to dismissal of the civil revision petition, C.R.P.M.P.No.5649 of 2014 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

23rd January, 2015
VGB