

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.240 of 2015

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.28.11.2014 in I.A.No.470 of 2005 in OS.No.109 of 2009 on the file of II Additional District Judge (FTC-I), Khammam.

2. Petitioners herein and the 4th respondent are the children of one Narayana. The said Narayana died in 1984. The 4th respondent has three sons who are respondents 1 to 3 herein.

3. The respondents 1 to 3 filed the suit O.S.No.13 of 1998 for partition of the properties inherited by the 4th respondent from his father late Narayana. A preliminary decree was passed by the trial Court in the said suit on 03.02.2005.

4. Challenging the same, respondents 4 and 5 filed A.S.No.325 of 2005 before this Court. The said appeal was also dismissed on 29.11.2013.

5. In the said appeal, a contention was raised by the respondents 4 and 5 herein that petitioners herein, who are the daughters of Narayana, are necessary parties and they should have been impleaded in the trial Court and when such an implead application was filed in I.A.No.587 of 2005, that the trial Court had dismissed the said application erroneously. This contention was rejected in the first appeal by this Court stating that the suit had been filed not for partition of properties of late Narayana but in respect of the partition of properties in the hands of the 4th respondent, and therefore the sisters of the 4th respondent, who are petitioners herein, are not necessary and proper parties.

6. The judgment in A.S.No.325 of 2005 has attained finality as it was not questioned by the respondents 4 and 5.

7. Thereafter I.A.No.470 of 2005 was filed by the respondents 1 to 3/plaintiffs/D.Hrs. under Order XX Rule 18 CPC for passing of a final decree to enable them to get possession of their respective shares in the plaint schedule properties.

8. Respondent No.5, mother of petitioners and 4th respondent, died on 08.12.2013 and petitioners were impleaded as her legal representatives in I.A.No.470 of 2005.

9. The petitioners herein filed counter in IA.No.470 of 2005 alleging that they are also coparceners and entitled to share; they had filed suit OS.No.44 of 2014 for partition which is pending; that in that suit the respondents 1 to 3 as well as 4th respondent herein were parties to it and temporary injunction had been issued in IA.No.1023 of 2014. They alleged that they were coparceners with the 4th respondent and were having undivided share in the properties and therefore, I.A.No.470 of 2015 should be dismissed. They also contended that without impleading them, the suit had been filed and so final decree cannot be passed.

10. By order dt.28.11.2014, the Court below dismissed the said application. It rejected the contention of the petitioners that they are entitled to a share in the plaint schedule properties, in view of the judgment dt.29.11.2013 in AS.No.325 of 2005 of this Court, wherein this Court upheld the dismissal by the trial Court of the petition for impleadment of the petitioners by holding that they are not necessary and proper parties. It therefore held that in order to pass a final decree it is necessary to appoint an Advocate-Commissioner to divide the schedule properties and did not allow I.A.No.470 of 2005.

11 Challenging the same, this Revision is filed.

12. Heard Sri V.Raghu, counsel for the petitioners and Sri Konturi Vinay Kumar, Counsel for the 1st respondent.

13. Counsel for the petitioners contended that since the petitioners are the sisters of the 4th respondent and are also daughters of late Narayana, in view of the amendment to Section 6 of the Hindu Succession Act, 1956 by the Hindu Succession Amendment Act, 2005, the petitioners are entitled to a share in the properties of late Narayana and the Court below had erred in rejecting their claim on the basis of the judgment dt.29.11.2013 in AS.No.325 of 2005. He also contended that the 5th respondent-Annapurnamma died on 08.12.2013 and petitioners had been impleaded as her legal representatives vide order dt.20.02.2014 in IA.No.106 of 2014 and since they are now on record, the order passed by this Court on 29.11.2013 in AS.No.325 of 2005, would no longer applicable to them.

14. Counsel for the 1st respondent on the other hand refuted the above contentions. He placed reliance on the judgment in ***Sheela Devi and others v. Lalchand and another***^[1] and contended that since the properties which are sought to be partitioned were in the hands of the 4th respondent and had devolved on him on the death of Narayana in 1984 itself, and since the succession had opened in 1984 itself, and at that time, the petitioners had no right as per law in the coparcenary properties in hands of the 4th respondent and respondents 1 to 3, the Hindu Succession Amendment Act of 2005 would not come to the aid of the petitioners. He further contended that in the judgment dt.29.11.2013 in AS.No.325 of 2005, this Court had also held that the petitioners are not necessary parties to the suit and their impleadment was rightly rejected by the trial Court; merely because they had been impleaded subsequently, after the death of the

5th respondent on 08.12.2013, the petitioners cannot overcome the judgment in AS.No.325 of 2005, which had not been challenged by them.

15. In the judgment dt.29.11.2013 in AS.No.325 of 2005 this Court held regarding the right of the petitioners to be impleaded in the appeal as under:

“So far as point No.2 is concerned, as rightly contended by the learned counsel for the respondents, the impleadment of sisters of the first defendant would not arise in the present case, as the suit, primarily, concerns partition of properties in the hands of the first defendant between himself and his sons, who are plaintiffs. The present suit is not one concerning the partition of properties of father of the first defendant. The sisters of the first defendant, therefore, are neither necessary nor proper parties. Moreover, in spite of the orders of the trial Court dismissing their application for impleadment way back on 29.08.2005, none of the sisters has made any application in this appeal and have accepted the said order of the trial Court and have not taken steps seeking their impleadment, in spite of being expressly aware of the present suit and the partition decree and the pendency of this appeal. It is, therefore, not open for the appellants to attempt to defeat the decree on the said ground of non-impleadment of the sisters of the first defendant. The second contention of the learned counsel for the appellants is also, therefore liable to be rejected and is accordingly rejected.”

16. It may be that after the said judgment was pronounced on account of the death of the 5th respondent on 08.12.2013, as legal representatives of the deceased-5th respondent, they had been impleaded as parties in the suit, but that would not in any way entitle them to a share in the plaint schedule properties, since in **Sheela Devi's** case(1 supra), the Supreme Court held that if succession had opened prior to coming into force the Hindu Succession Amendment Act of 2005, the provision of said Act would have no application.

17. In this view of the matter I am of the view that the Court below did not commit any error of jurisdiction in allowing I.A.No.470 of 2005.

18. So the Civil Revision Petition is dismissed. There shall be no order as to costs.

19. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

11th August, 2015
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[\[1\]](#) 2006(8) SCC 581