

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

C.R.P.No.406 of 2010

ORDER:

This Revision Petition is filed challenging the order dt.24-11-2009 in I.A.No.1068 of 2008 in O.S.No.940 of 2008 of the V Additional Senior Civil Judge, Guntur.

2. Petitioners herein are defendant Nos.1 and 2 in the suit. The said suit was filed by the respondents seeking partition of the plaint schedule property and for separate possession of 11/36th share of the respondents and mesne profits etc. The petitioners are none other than the father-in-law and mother-in-law of 1st respondent and the grand parents of respondent Nos.2 and 3. The husband of 1st respondent who was the son of the petitioners had died on 20-09-2007 leaving behind the respondent Nos.1 to 3 as his legal representatives.

3. The respondents contended that the plaint schedule properties are joint family properties in which the husband of 1st respondent would also have a share and filed the suit for partition.

4. The suit was opposed by the petitioners stating that only item-1 of the plaint schedule was joint family property. They alleged that there was a prior partition in regard to the said property. It was contended

that the other items of the properties are self acquired properties of 1st petitioner.

5. Pending suit I.A.No.1068 of 2008 was filed by the respondent Nos.1 to 3 seeking interim maintenance @ Rs.2000/- for 1st respondent and Rs.1,000/- each for respondent Nos.2 and 3 pending disposal of the main suit.

6. In the affidavit filed in support of said I.A., they contended that they are not in a position to eke out livelihood, that they do not have capacity to maintain themselves and therefore for maintenance of the respondent Nos.1 to 3 and for the education of respondent Nos.2 and 3, they require the aforesaid sum pending suit.

7. The petitioners opposed the said application as not maintainable. They reiterated the stand taken by them in the Written Statement.

8. By Order dt.24-11-2009, the Court below allowed the said application and granted Rs.2,000/- to 1st respondent and Rs.1,000/- each to respondent Nos.2 and 3 as maintenance per month pending disposal of the suit and directed 1st petitioner to pay the same from the date of filing of the petition till the date of disposal of the main suit. It held that *prima facie* the husband of 1st respondent had an undivided share in item-1 of the plaint schedule

property of an extent Ac.1.35 cts; 1st petitioner is getting yield out of the said item in which his deceased son would have undivided share; *prima facie* no evidence is placed by the petitioner to show that 1st respondent is owning property and is getting sufficient income from it; Exs.P-6 to P-11 show that respondent Nos.2 and 3 are pursuing their education; and when the respondent Nos.1 to 3 do not have capacity to maintain themselves, 1st petitioner being the father-in-law and grand father had an obligation to maintain 1st respondent and respondent Nos.2 and 3 and the same can be met out of the properties in which his deceased son had an undivided share.

9. Challenging the same, this Revision Petition is filed.

10. Learned counsel for the petitioners contended that the suit being one for partition, the Court below could not have granted interim maintenance pending disposal of the suit.

11. Learned counsel for the respondents disputed the said contention and placed reliance on **Asa Nand and others Vs. Baldev Raj and another**^[1], **Subbaya Maniyagarar Vs. Kandaswami and another**^[2] and **Malladi Vidyaranya Vs. Malladi Laxmi Tripura Sundari**^[3]. He contended that in a suit for partition, interim maintenance pending suit can be granted to

members of the joint family and the Court below was correct in awarding maintenance pending disposal of the suit.

12. In **Asa Nand** (1 supra), the Allahabad High Court held that an application under Section 151 CPC for grant of interim maintenance during pendency of partition suit is maintainable. It observed that member of the joint family who is made to file a suit and otherwise has been deprived of the admitted share of the joint family, may bring to the notice of court facts relevant in this regard and can legitimately make a prayer to it for grant of so much of money and as may admittedly fall to his share; and acceding to such a request by the Court at the stage when a suit is still pending in the Court would not, in any way, do injustice to the members managing property. It held that the Court would only further the cause of justice.

13. Similar view has been taken in **Subbaya Maniyagarar** (2 supra) and it was held that minor plaintiffs were admittedly entitled to maintenance and they should not be allowed to starve while their partition suit was going on and such maintenance can be granted under Section 151 CPC.

14. In **Malladi Vidyaranya** (3 supra), this Court followed the decision of **Subbaya Maniyagarar** (2 supra) and held that the Court has inherent jurisdiction to grant interim maintenance under Section 151 CPC pending

disposal of a suit for maintenance.

15. Having regard to these decisions, I am unable to agree with the contention of the learned counsel for the petitioners that in a suit for partition, the Court cannot grant interim maintenance to the plaintiffs.

16. Coming to the quantum of maintenance, it is admitted that item-1 of the plaint schedule property was inherited by 1st petitioner. Therefore, *prima facie*, the 4th respondent and the husband of 1st respondent along with 1st petitioner would have a share therein. No doubt it is the plea of 1st petitioner that there was prior partition. But the burden is on the 1st petitioner to establish this plea in the suit. Since 1st petitioner and 2nd petitioner have not disclosed the income which item-1 of the plaint schedule is yielding and since the same is within their exclusive knowledge, it is not open to them to contend that the award of Rs.2,000/- to 1st respondent and Rs.1,000/- to respondent Nos.2 and 3, is excessive.

17. Therefore, I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. The Court below is directed to expeditiously dispose of the suit within six months from the date of receipt of a copy of this order. No costs.

18. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-06-2015

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[\[1\]](#) AIR 1975 Allahabad 139

[\[2\]](#) AIR 1935 Madras 105

[\[3\]](#) II (1990) DMC 16