

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 4198 OF 2015

DATED 4TH November, 2015

BETWEEN

Dodda Nagalakshmi (died) per LRs

...Petitioners

And

Dasari Mythyala Rao and ors

...Respondents.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 4198 of 2015

ORDER:

The petitioners herein are the third parties to O.S.No.413 of 2010 on the

file of the learned Principal Civil Judge, at Tanuku. The said suit was filed by the first respondent herein who was the purchaser of undivided $\frac{1}{3}^{\text{rd}}$ share i.e. Ac.0.18 cents of land in R.S.No.30/11 out of total extent of Ac.0.54 cents situated in Velagadurru Village, Undrajavaram Mandal, West Godavari District in a Court auction. One Madhu Srinu filed O.S.No.878 of 2003 against the third respondent herein for recovery of the amount due to him and a decree was passed in his favour. He filed E.P.No.350 of 2006 for sale of the plaint schedule property of Ac.0.50 cents comprised in R.S.No.32/4A. The second respondent who is the father of the third respondent filed EA.No.22 of 2008 under Order 21 Rule 58 CPC claiming the property as his absolute property and the said application was dismissed. The sale of property took place on 21.8.2009 and the first respondent herein was the successful auction purchaser. Later on sale was confirmed by the Court below on 28.10.2009 and a sale certificate was issued thereon. When the first respondent herein filed EA.No. 111 of 2010 seeking delivery of the property, $\frac{1}{3}^{\text{rd}}$ undivided share was delivered to him on 20.03.2010. Accordingly these proceedings were closed. Since the property purchased by him was the undivided $\frac{1}{3}^{\text{rd}}$ share, the first respondent herein filed O.S.No. 413 of 2010 seeking partition of the property into three equal shares and to allot one share to him. A written statement was filed by the second respondent herein in the said suit claiming the property under an unregistered Will dated 5.12.1992 executed in his favour by one Saladi Rama Lakshmi who is his (second respondent herein) sister. Now the present application i.e. I.A.No.705 of 2014 is filed by one Dodda Nagalakshmi seeking to come on record herself as party to the suit. The said application was dismissed by the Court below through order dated 25.02.2015. Challenging the same, the present Civil Revision Petition is filed.

After disposal of I.A.No.705 of 2014 by the Court below, the petitioner expired on 12.03.2015 and her legal representatives have filed the present Civil Revision Petition.

The deceased Dodda Nagalakshmi filed I.A.No.705 of 2014 claiming that the suit schedule property is the absolute property of her father who is second

respondent herein/first defendant in the suit and it was inherited through a Will executed by his sister by name Saladi Ramalaskhmi. She claims to have entered into an agreement of sale with her brother, 2nd defendant in the suit for purchase of 1/4th undivided share and in the event of partition of property by her father, he would get 1/5th share and she would have to get registered that 1/5th share. It is submitted by the learned Counsel for the first respondent/plaintiff that the execution of Will by the sister of the second respondent was not mentioned in the application filed by him (second respondent) in EA.No.22 of 2008 and that the present proceedings are initiated only to drag on the partition of the suit schedule property and allotment of one such share which he purchased in a Court auction sale. The application of the petitioner, i.e. I.A.No. 705 of 2014 was however dismissed by the Court below on some other ground by holding that the third respondent herein, who is second defendant in the suit cannot execute agreement of sale date 3.1.1999 in favour of the petitioner.

But the point that arises for consideration is that in a proceedings of this nature, in the absence of disclosure of execution of Will by the second respondent in EA.No.22 of 2008, whether the petition in I.A.NO.705 of 2014 can be allowed. From a perusal of the record, it is clear that the first respondent/plaintiff purchased the suit schedule property in a Court auction and the said sale was confirmed by the Court below and a sale certificate was issued to him. Thereafter, the purchased property being the undivided share, the auction purchaser filed the present suit for division of property into three equal shares and allot one such share to him. At no point of time, the predecessor in interest, the petitioner- Dodda Nagalakshmi, came before the Court and claimed her right over the property. In the circumstances, this Court is of the opinion that the present application is filed only to drag on the proceedings and partition of the property. In view of the same, the petitioner cannot be impleaded as party to the suit. I do not see any illegality or irregularity in the order of the Court below warranting interference by this Court in the Civil Revision Petition.

The Civil Revision Petition is dismissed. Miscellaneous petitions pending

consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 4th November, 2015.

Msnr_x