

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

CIVIL REVISION PETITION No.694 of 2015

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ORDER:

This Civil Revision Petition is filed challenging the order dt.27-10-2014 in I.A.No.428 of 2014 in O.S.No.423 of 2009 of the VIII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar.

2. The petitioner herein is 1st defendant in the above suit. The said suit was filed against petitioner and others by respondent Nos.1 to 3 for partition and separation possession of the plaint schedule properties and for 1/9th share to each of the plaintiffs and defendants therein.

3. The 2nd defendant/4th respondent herein contended that item No.1 of the plaint schedule property was purchased by her husband under a registered sale deed dt.25-08-1966 and the 2nd item of the plaint schedule property was also purchased by her husband under another registered sale deed dt.08-10-1979 and so the plaint schedule properties are the self-acquired properties of her husband. She contended that neither the plaintiffs nor other defendants are entitled to any share in the

properties or the rents/profits derived there from.

4. The petitioner, who is 1st defendant therein, however supported the plaintiffs/respondent Nos.1 to 3 and contended that these two items are joint family properties. He contended there is a deed of family arrangement dt,02-04-1984 entered into between the coparceners of HUF of which he is the Kartha and a Will dt.21-04-1994 of late M.Satyamma, mother of 1st defendant exists and therefore respondent Nos.1 to 3 are not entitled to any share in the plaint schedule properties.

5. It appears that on 18-04-2012 in I.A.No.198 of 2012, the Court below directed the petitioner to deposit the rents collected from the two plaint schedule properties from June, 2012.

6. The petitioner filed I.A.No.428 of 2014 to permit him to withdraw 1/9th share of the said amount without prejudice to his contentions in the suit. He contended that he required money for meeting his medical requirements as he is suffering from many ailments like diabetes and has to spend lot of money for Doctors' consultations, for diagnostic tests etc.

7. This application was opposed by 2nd defendant/4th respondent herein, who contended that the plaint

schedule properties are the self-acquired properties of her husband and petitioner is not entitled to any share in the said property or any rents from that property.

8. By order dt.27-10-2014, the Court below dismissed I.A.No.428 of 2014. It held that 4th respondent herein, who is 2nd defendant in the suit, had denied the contention of petitioner that plaint schedule properties are joint family properties and had claimed that the plaint schedule properties are self-acquired properties of her deceased husband; that the issue in the suit is not merely as to what proportion of property is to be allotted to each member of the Hindu Undivided Family because some of the parties out rightly denied the HUF itself; therefore the claim of petitioner for 1/9th share in the rents must be adjudicated upon only in the main suit on the basis of evidence adduced by both parties and it cannot be granted pending suit.

9. Challenging the same, this Revision is filed.

10. Learned counsel for petitioner contended that the petitioner is a Senior Citizen; that he requires the amounts in view of his advanced age and ill-health; he is disputing that the plaint schedule properties are the self-acquired properties of the husband of 2nd defendant/4th respondent

herein; and since the petitioner is only seeking an interim order in the suit for 1/9th share in the rents from the plaint schedule properties, the Court below ought to have allowed the said application. He also placed reliance on the judgment of the High Court of Jharkhand at Ranchi in **Prawind Kumar Rastogi @ Praveen Kumar Rastogi Vs. Sheo Shankar Prasad Rastogi & Others Vs. Sheo Shankar Prasad**^[1].

11. Admittedly, there is a dispute in the suit whether the plaint schedule properties are joint family properties or whether they are self-acquired properties of the husband of 2nd defendant/4th respondent herein. This issue has to be decided in the suit after taking evidence from both sides. The burden of proof that the plaint schedule properties are joint family properties is on the plaintiffs/respondent Nos.1 to 3 (See **Srinivas Krishnarao Kango Vs. Narayan Devji Kango and others**^[2]). The same issue will have to be considered while deciding the I.A. also and since it is not possible to give an advance ruling on the said issue while deciding the I.A., the Court below, in my opinion, has rightly rejected it.

12. The petitioner is a retired Government employee and is obviously getting pension and other benefits. The

application filed by him is not seeking maintenance from his daughters/respondent Nos.1 to 3, who are plaintiffs in the suit. Therefore, it is not possible to accept the contention of the petitioner at this stage that the plaint schedule properties are not the self-acquired properties of the husband of 2nd defendant/4th respondent herein and grant relief to him in the I.A. No.428 of 2014.

13. The judgment cited by the learned counsel for petitioner has no application because in that case the dispute was as to quantum of share claimed by the parties and there was no dispute that the properties are joint family properties or not. In the present case, such a dispute is existing in view of the plea raised by 2nd defendant/4th respondent.

14. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

15. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 23-06-2015

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[\[1\]](#) W.P. (C) No.4039 of 2010

[\[2\]](#) AIR 1954 SC 379