

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

CIVIL REVISION PETITION No.4995 of 2011

ORDER:

This Revision is filed challenging the docket order dt.13-10-2011 in I.A. (C.F. No.9533 of 2011) in I.A.No.47 of 1998 in O.S.No.49 of 1992 on the file of the Senior Civil Judge, Gudur.

2. The said suit was filed by 1st respondent against respondent Nos.2 to 5 for partition of the suit schedule properties and for 1/5th share therein. Preliminary decree in the said suit was passed on 08-07-1997. Thereafter I.A.No.47 of 1998 was filed by 1st respondent against other respondents for passing a final decree.
3. In that application, the petitioner herein filed I.A. (C.F.No.9533 of 2011) under Order XXI Rule 97 C.P.C. contending that he had purchased an extent of Ac.9-34 cents described as item No.1 Sl.No.1 and a portion of Sl.No.2 of extent Ac.5.00 cents under a registered sale deed dt.24-08-1992 from 2nd respondent for valuable consideration and that he is in possession thereof. He contended that he had filed I.A.No.238 of 2005 along with others under Order I Rule 10 C.P.C. to implead himself and the others as defendant Nos.5 to 11 after passing of the preliminary decree, but the said application was rejected on 29-10-2007 observing that he would have an opportunity to file a petition under Order XXI Rule 97 C.P.C. and also to file a separate suit for declaration that the decree in the partition suit is not binding upon him and other petitioners, who sought to get impleaded. He contended

that the possession of petitioners was sought to be disturbed by the Advocate-Commissioner appointed under Order XXVI Rule 13 C.P.C., that the petitioner and other sharers had asked the Advocate-Commissioner not to take measurements in the land, and since the petitioner is claiming independent right, title and interest in the property purchased by him, the 1st respondent cannot be allowed to execute the decree without deciding the petitioner's entitlement over the schedule property.

4. Without numbering the said application, the Court below dismissed it stating that it is not maintainable at the stage when even a final decree is yet to be passed.
5. Challenging the same, this Revision is filed.
6. Learned counsel for petitioner Sri M.N.Narasimha Reddy contended that final decree in a partition suit does not require execution and that the application filed by petitioner ought to have been entertained by the Court below and decided accordingly.
7. I am unable to agree with the said submission. In a partition suit normally a preliminary decree will decide the shares of the parties to the suit. Thereafter an application for passing a final decree will be filed. Under Order XXVI Rule 13 and 14 C.P.C., a Commissioner would be appointed to suggest means to partition the properties. It is only thereafter the Court will draw up a final decree indicating which portion of what property is allotted to which party. It is only the final decree, which is executable as held in **Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and others.**

8. Merely because the Advocate-Commissioner appointed under Order XXVI Rule 13 C.P.C. intended to take measurements of the property in possession of petitioner, the petitioner cannot contend that he is sought to be dispossessed by the Advocate-Commissioner at the instance of 1st respondent. The petitioner, therefore, cannot maintain an application under Order XXI Rule 97 C.P.C. at the stage when final decree has not yet been passed, and the Court below is therefore right in rejecting I.A. (C.F. No.9533 of 2011).
9. The Civil Revision petition is therefore dismissed. However, it is made clear that after the final decree is passed, the petitioner would be entitled to move an application under Order XXI Rule 97 C.P.C. and if such an application is filed, the Court below shall decide the same in accordance with law. No costs.
10. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 22-09-2015

Vsv