

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

C.R.P.No.4404 of 2015

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.11.09.2015 in I.A.No.74 of 2015 in O.S.No.19 of 2015 of the V Additional District Judge, Jangaon.

2. The petitioner herein is a third party to the said suit. She had a brother by name Methuku Goura Reddy who died. The grandson of Methuku Goura Reddy, who is the 1st respondent herein had filed a suit against the son, daughter-in-law and grand children of Methuku Goura Reddy, for partition of the plaint schedule properties.

3. In the plaint it is contended that the properties have been acquired by Methuku Goura Reddy through his ancestors by way of succession/purchase and also under a partition with his brother Methuku Ramachandra Reddy.

4. The petitioner, who is the sister of Goura Reddy, filed I.A.No.74 of 2015 under Order I Rule 10(2) CPC contending that she is entitled to ½ share along with late Methuku Goura Reddy in respect of the properties inherited by him from his ancestors. She claimed that under the provisions of Hindu Succession Act, 1956 she is entitled to a share in the suit schedule properties and therefore she ought to be impleaded.

5. Counter affidavit was filed by the 1st respondent opposing the petitioner's impleadment alleging that his family members are in possession of the plaint schedule properties since the date of partition among the heirs of Methuku Venkata Ramreddy, who is the father of late Goura Reddy. He contended that the petitioner ought to have filed a separate suit for partition against the entire properties which

were acquired by late Methuku Venkata Ramreddy and not just against the exclusive share of late Methuku Goura Reddy.

6. By order dt.11.09.2015 the Court below dismissed the said application holding that if the petitioner is entitled to a share in the properties of late Methuku Venkata Ramreddy, she should file a separate suit against the total properties owned by him by adding his second wife-Andamma and her legal heirs, and without their addition it is not possible to effectively adjudicate her rights. It further held that the petitioner cannot claim $\frac{1}{2}$ share in the exclusive property of late Methuku Goura Reddy, more particularly, when the suit is among the legal heirs of the branch of late Goura Reddy.

7. Challenging the same, this Revision is filed.

8. Counsel for the petitioner contended that the impugned order cannot be sustained since the Court below had opined that the petitioner may have a share in the properties of late Methuku Venkata Ramreddy. He further contended that since the petitioner has a direct interest in the suit schedule properties as a Class-I heir, she ought to be impleaded under Order I Rule 10 CPC. He also disputed the finding of the Court below that the suit schedule properties are the exclusive properties of late Methuku Goura Reddy.

9. From the facts narrated in the plaint filed in O.S.No.19 of 2015, it is clear that the suit was instituted by the grandson of late Methuku Goura Reddy through his daughter against the son of Goura Reddy, and the latter's wife and children.

10. No doubt, there was a mention that some of the plaint schedule properties have been inherited by Methuku Goura Reddy, that some have been purchased by him and the petitioner is also shown in the family tree set out in the plaint.

11. It is not disputed that Goura Reddy's father Venkata Ramreddy

had married another lady by name Andamma after the death of his first wife Sathamma. While the petitioner and Goura Reddy are the children of Venkata Ramreddy through his first wife, Sathamma; Narsamma and Ramchandra Reddy are the two children of Venkata Ramreddy through his second wife Andamma. Admittedly, Andamma is not a party to the present suit nor her children, who according to the plaint, are allegedly not alive.

12. Since the plaint also mentions about a partition between Goura Reddy and Ramchandra Reddy and the properties now sought to be partitioned in the suit are alleged to have been fallen to the share of Goura Reddy, the question whether the petitioner is entitled to any share, cannot be adjudicated in the present suit. This is because if the petitioner is impleaded and allowed to contend that the plaint schedule properties are joint family properties notwithstanding the partition between Goura Reddy and his brother-Ramachandra Reddy, it would amount to permitting the petitioner to reopen the said partition and this cannot be done in the present suit. Petitioner therefore has to file a separate suit seeking partition and separate possession of her share in the properties of late Methuku Venkata Ramreddy after impleading his second wife and possible legal heirs of the children of Venkata Ramreddy through her, if there are any.

13. If the petitioner is impleaded in the present suit, the nature of the suit would be altered and the Court below would be forced to go into the issue of whether the plaint schedule properties belong to Methuku Goura Reddy or Methuku Venkata Ramreddy. Such an issue is extraneous to the present suit.

14. Therefore, giving liberty to the petitioner to file a separate suit and claim a share in the properties of late Muthuku Venkata Ramreddy, if she is so advised, this Civil Revision Petition is dismissed. There shall be no order as to costs.

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

M.S.RAMACHANDRA RAO, J

27th October, 2015.

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