THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.4973 and 4974 of 2014

COMMON ORER:

Since these two Civil Revision Petitions arise out of the same suit between the same parties, they are being disposed of by this common order.

2. The petitioner herein filed suit O.S.No.805 of 2011 before the Special Sessions Judge for SC/ST (POA) Act 1989-cum-VII Additional. District & Sessions Judge at L.B.Nagar, Ranga Reddy against the respondents 1 to 3 alleging that the petitioner and respondents 1 to 3 are brothers and they are entitled to 1/4th share each in the plaint schedule property which is an extent of Acs. 6-08 gts of land in survey No.805 and 89/B of Korremula village, Chowdaryguda Grampanchayat, Ghatkesar Mandal, R.R. District belongs to their mother by name Smt. Hoor Jahan Begum.

3. Written statement was filed opposing the suit claim.

4. Thereafter I.A.No.2668 of 2014 was filed by the 1st respondent under Order I Rule 10 CPC to implead respondents 4 to 6 herein as parties to the suit and I.A.No.2669 of 2014 was filed under Order VI Rule 17 CPC to include three premises bearing house Nos.8-2-584/4, 8-2-584/5/B and 8-2-584/1/B with common compound wall at

Road No.9, Banjara Hills, Hyderabad as C-schedule properties.

5. These applications were filed after trial commenced and it was coming up for cross-examination of PW2.

6. In the affidavit filed in support of these applications, it was contended by the 1st respondent that he floated a company by name M/s Hoe Leather Garments Pvt. Ltd.; that it is located in the land in Korremula village purchased in the name of his mother; and out of the money siphoned from the said company, the petitioner and respondents 2 and 3 acquired properties in Banjara Hills referred to above, in the name of their wives. He therefore, contended that these properties also should be treated as joint family properties and the plaint should be amended to include these properties in the plaint schedule and wives of petitioner and respondents 2 and 3 should be impleaded in the suit as defendants 4 to 6.

7. These applications were opposed by the petitioner as well as respondents 2 and 3. They denied the allegation that the properties in Banjara Hills, which are now sought to be included in the plaint schedule, were procured in the name of their wives by siphoning off money from the company referred to above. It was contended that taking into account the nature of the suit filed, there is no necessity to implead their spouses or to include the properties in Banjara Hills, as

sought by the 1st respondent. It was specifically contended that the properties sought to be included are the exclusive properties of the wives of the petitioner and respondents 2 and 3 and if they are included in the plaint schedule in the suit, it would alter the nature of the suit and widen the scope of the suit from one for partition of the property standing in the name of the mother of the petitioner and respondents 1 to 3 into a suit for also deciding the title to the Banjara Hills properties referred to above. It was pointed out that extraneous and irrelevant facts cannot be allowed to be introduced and persons who are unconnected with the original *lis* cannot be impleaded.

8. By separate orders dt.13.11.2014, the Court below allowed both I.As.No.2688 of 2014 and 2689 of 2014.

9. It held that taking into account the allegations made by the 1st respondent, the application for amendment of the plaint schedule to include the properties in Banjara Hills can be allowed and since the said application is allowed, the application for impleadment also should be allowed. It also observed that in the suit for partition, the footing of the plaintiff and defendants are one and the same, but the burden of proof shifts according to their pleading and is initially vested on the person who alleges that the properties are liable for partition. So, to provide equal opportunity, these applications are liable

to be allowed.

10. Challenging the same, these two Revisions are filed.

11. Heard Sri Osman Shaheed, Senior Counsel appearing for Sri Mohd Adnan, Counsel for the petitioner and Sri Y.Krishna Mohan Rao, Counsel for 1st respondent.

12. Counsel for the petitioner has contended that the suit O.S.No.805 of 2011 had been filed by him seeking partition of the properties standing in the name of petitioner's mother by name Hoor Jahan Begum and for allotment of 1/4th share therein. Merely because the 1st respondent/defendant alleges that in the said land, there is any company and the income from it is allegedly utilized to purchase the properties at Banjara Hills in the name of the wives of the petitioner and respondents 2 and 3, the said Banjara Hills properties cannot be included in the plaint schedule, nor can the wives of the petitioner and respondents 2 and 3 be added as parties to the suit. He contended that this would amount to converting the suit for partition of properties of Hoor Jahan Begum into a suit for declaration of title in respect of Banjara Hills properties and this cannot be allowed to be done. Even if the 1st respondent had any right in respect of the Banjara Hills properties referred to above, he should be asked to go and file separate suit and seek declaration of title and recovery of possession therein

but he cannot be allowed to seek the said reliefs in the present suit.

13. Although counsel for the 1st respondent sought to support the order passed by the Court below, I am of the opinion that there is considerable force in the contention of the counsel for the petitioner in both Revisions.

14. The suit O.S.No.805 of 2001 was filed seeking partition of the properties of the mother of the petitioner and respondents 1 to 3. Even assuming for the sake of argument that there is an industry located in the suit property and the income there from was utilized to purchase the Banjara Hills properties referred to above in the name of wives of the petitioner and respondents 2 and 3, including the said Banjara Hills properties in the suit schedule and impleading the wives of the petitioner and respondents 2 and 3 in the present suit would totally alter the nature of the suit compelling the trial Court to decide the title to the Banjara Hills properties, and it would therefore result in mis-joinder of causes of action and also mis-joinder of parties. If the 1st respondent has any claim in respect of the Banjara Hills properties referred to above, he is at liberty to seek appropriate relief against the petitioner as well as respondents 2 to 5 in a separate proceedings and he cannot be allowed to seek adjudication of his alleged title to Banjara Hills properties in O.S.No.805 of 2011.

15. In this view of the matter, I am of the opinion that the impugned orders dt.13.11.2014 cannot be sustained.

16. Accordingly, both Civil Revision Petitions are allowed. The orders dt.13.11.2014 in I.A.Nos.2688 of 2014 and 2689 of 2014 in O.S.No.805 of 2011 of the Special Sessions Judge for SC/ST (POA) Act 1989-cum-VII Additional. District & Sessions Judge at L.B.Nagar, Ranga Reddy District are set aside and both the I.A.s are dismissed. The 1st respondent is granted liberty to file a separate suit seeking relief in respect of the Banjara Hills properties referred to above against the petitioner and respondents 2 to 6. There shall be no order as to costs.

17. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

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M.S. RAMACHANDRA RAO, J

14th August, 2015.
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