

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

—
CIVIL REVISION PETITION No.4924 of 2014

ORDER:

Heard the learned counsel for petitioners and the learned counsel for respondents.

2. The present Civil Revision Petition arises out of the order dated 08.04.2013 in I.A.No.26 of 2013 in O.S.No.12 of 2009 on the file of the Court of the District Judge, Chittoor (for short, trial Court).

3. The first petitioner herein is second plaintiff and the second petitioner herein is proposed third plaintiff in the above suit, which was filed for partition. In the said suit, I.A.No.26 of 2013 was filed by the petitioners seeking permission of the trial Court to implead the second petitioner as third plaintiff in the said suit on the ground that he stepped into the shoes of the deceased first plaintiff by virtue of an unregistered Will dated 26.01.2011 bequeathing the property of the first plaintiff in his favour. A counter-affidavit was filed stating that the second petitioner is not entitled for any share in the property and hence, he cannot come on record in place of the deceased first plaintiff. The trial Court, by its order dated 08.04.2013, dismissed the said application with the following observations:

“6. As rightly objected by Sri V.Ramanarayana Reddy, learned counsel for respondents, the 2nd petitioner Pojari Bhuvaneswara Reddy, profounder of the unregistered Will dated 26.1.2011 cannot be treated as legal representative of the deceased 1st plaintiff to maintain the petition under Order 22 Rule 3 C.P.C. It appear that the 2nd petitioner, the profounder is claiming individual right with regard to the share of the deceased 1st plaintiff by virtue of the unregistered will. The 2nd petitioner, who is claiming individual right by virtue of the unregistered will said to have executed by the deceased 1st plaintiff, is one of the coparcener as already referred to above, cannot be within the purview of legal representative to come within the purview of the petition under Order 22 Rule C.P.C.

7. Therefore, as rightly objected by the learned counsel for the respondents, the petition under Order 22 Rule 3 is not maintainable and therefore, liable to be dismissed.”

4. The present application i.e., I.A.No.26 of 2013 was filed only to bring the second petitioner on record as the legal heir of the deceased first plaintiff. He is claiming a right under an unregistered Will dated 26.01.2011 alleged to have been executed by the first plaintiff. The second petitioner will not get any right, title or interest in the property, through which the first plaintiff was entitled, merely because of allowing the application for coming on record in place of the deceased first plaintiff. The entitlement of the deceased first plaintiff and the consequent entitlement of the second petitioner are issues that have to be considered and decided in the main suit for partition. It is always open to the parties to the suit to agitate their rights and it relates to the merits of the case. By the presence of the second petitioner, he is not automatically entitled for any share in the property without establishing his right in the property.

5. In the circumstances, the impugned order of the trial Court is set aside and I.A.No.26 of 2013 is allowed permitting the second petitioner to come on record as the third plaintiff in the said suit.

6. The Civil Revision Petition is, accordingly, allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 18.11.2015

TJMR