

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP No.1453 of 2015

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Date:21.08.2015

Between:

C. Raja Kumari

... Petitioner.

AND

C. Gopal Kishna Rao and others

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP No.1453 of 2015

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ORDER:

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This revision is preferred challenging order dated 09-02-2015 in I.A.No.1411/2014 in O.S.No.41/2011 on the file of Special Judge for SCs & STs (POA) Act-cum-V Additional District Judge, Medak at Sangareddy.

The petitioner herein is D1 in the above referred suit in O.S.No.41/2011 which is filed for partition of plaint schedule properties. The petitioner herein filed a petition under Section 151 CPC to direct the other defendants i.e., R2 & R3 in the application to first lead the evidence as they are

supporting the claim of the plaintiffs. This application was resisted and the trial Court, on a consideration of material and the submissions of both sides, directed the petitioner herein to lead evidence first since he has already filed chief affidavit prior to the examination of other defendants i.e., D2 & D3. Aggrieved by the said orders, present revision is preferred.

2. Heard both sides.

3. Advocate for revision petitioner vehemently contended that plaintiffs having approached the Court seeking partition, onus is on the plaintiffs to first prove that the plaint schedule properties are joint family properties and that plaintiffs have got a share in it. He submitted that the trial Court, without noticing the fact that the other defendants, who are supporting the claim of the plaintiffs, directed the contesting defendant to first lead evidence and the order of the trial Court is illegal and contrary to the settled procedure contemplated for conducting trials.

On the other hand, Advocate for plaintiffs submitted that the trial Court rightly dismissed the application of the first defendant by considering the conduct of the petitioner and that there is no illegality or irregularity in the order of the trial Court to be interfered by this Court in the revision.

4. I have perused the material papers filed along with the revision. As seen from the issues framed by the trial Court on the basis of pleadings, the initial burden was put on D1 in

respect of the plea of earlier partition pleaded in the written statement. Now from the submissions of both sides, it is clear that the petitioner has already filed her chief affidavit and it is at that stage this application is filed.

Now without going into the merits and demerits of the case and the correctness of the procedure adopted by the trial Court, I feel it just and appropriate to direct the petitioner herein to proceed with the trial by reserving her right for rebuttal evidence in respect of First and Third issues to protect her right to rebut the evidence of plaintiffs and the supporting defendants adduced by them contrary to the plea taken by her.

5. For these reasons, revision is disposed of at admission stage with the above rebuttal right to petitioner and by directing the Court below to dispose of the suit as expeditiously as possible, preferably within six months from the date of receipt of this order. No costs.

6. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:21.08.2015

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