

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.1525 of 2010

O R D E R:

This revision filed under Article 227 of the Constitution of India by the plaintiffs in O.S.No.18 of 2009, on the file of the Court of the Senior Civil Judge, Nandigama, challenges the docket order dated 17.12.2009 passed in O.S.No.18 of 2009.

2. Heard Sri B.Narasimha Sharma, learned counsel for the petitioners and none appears for the respondents despite service of notice on the respondents.

3. The petitions herein instituted O.S.18 of 2009 on the file of the Court of the Senior Civil Judge, Nandigama District, for partition of the plaint schedule properties into three equal shares and for allotment of two such shares in favour of the plaintiffs/petitioners herein. As per the pleadings in the plaint, the petitioners and the respondent are the daughters of one Smt.N.Nalajala Seshamma who is the wife of Ayyavaraiah. One Sri Chandra Sekhara Rao and Murahari Rao are the sons of said N.Nalajala Seshamma and the said Seshamma got land of Ac.2-56 cents in R.S.No.329/1, Ac.1-44 cents in R.S.No.329/2 and ac.1-30 cents in R.S.No.142/1 situated in Mundlapadu village, Penuganchiprolu Revenue Mandal, Krishna District. It is further pleaded in the plaint that the said properties are self acquired properties of the said Seshamma and the revenue officials also issued pattadar pass book and title deeds in her favour for the said lands. It is also stated that the said Seshamma settled Ac.1-00 cents of land out of Ac.2-56 cents in R.S.No.329-1 to her second son Murahari Rao under a registered settlement deed on 10.06.2004. The plaint further avers that Smt. Seshamma executed a will deed dated 07.04.2007 in a sound and disposing

state of mind bequeathing the plaint schedule property in favour of the plaintiffs and the defendant equally and another extent of Ac.1-30 cents in R.S.No.142-1 to Nalajala Srinivasa Rao, who is the elder son of Chandra Sekhara Rao. It is averred that the plaintiffs and the defendant are in joint possession and enjoyment of the plaint schedule property and enjoying the usufructs therein jointly. It is also pleaded that the plaintiffs approached the defendant in the month of January, 2009 and demanded her to come forward and cooperate for partition of the plaint schedule property with metes and bounds as mentioned in the will deed dated 07.04.2007 but the defendant is postponing the matter by giving evasive replies. With the above averments, the petitioners herein filed O.S.No.18 of 2009.

4. The learned Senior Civil Judge, Nandigama, by way of an order dated 17.12.2009, directed the plaintiffs to add their brothers viz., Chandra Sekhara Rao and Murahari Rao as parties to the suit for partition. The said order is under challenge in the present revision.

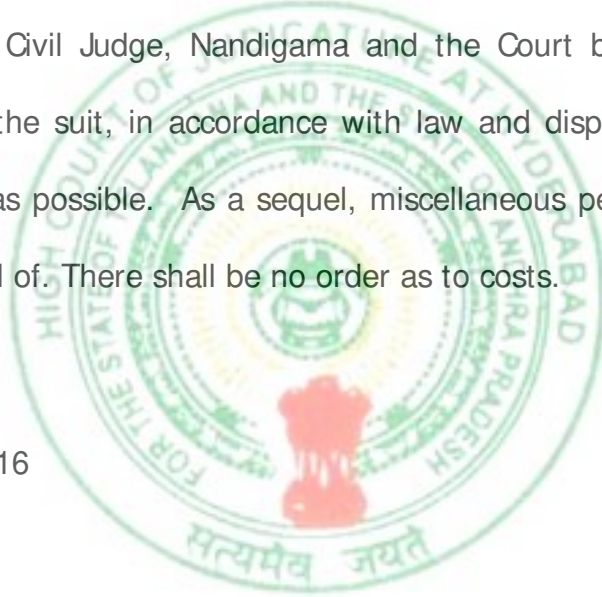
5. It is contended by the learned counsel for the petitioners herein that the order passed by the Court below is erroneous and contrary to law. It is further contended that since it is the categorical case of the plaintiffs that the property covered by the Will dated 07.04.2007 is a self-acquired property, only the plaintiffs and the defendants are entitled for share in the said property. It is also the contention of the learned counsel for the petitioners that the direction of the Court below to implead the brothers also is unwarranted and in fact the brothers of the petitioners herein did not come up before the Court with any implead application. It is also the submission of the learned counsel that the presence of the proposed petitioners in the instant case is not necessary and the impugned order is unsustainable.

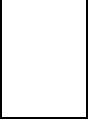
6. This Court finds sufficient force in the said submissions made by the learned counsel for the petitioners. As per the pleadings in the plaint, it is the categorical case of the petitioners that the subject property is a self acquired property of their mother who executed registered Will dated 07.04.2007, bequeathing the said properties only to the petitioners and the first respondent. The reasons assigned by the learned Judge, in the considered opinion of this Court, for passing the impugned order are neither sustainable nor tenable.

7. For the aforesaid reasons, petition is allowed, setting aside the docket order dated 17.12.2009 passed in O.S.No.18 of 2009, on the file of the Court of the Senior Civil Judge, Nandigama and the Court below is directed to proceed with the suit, in accordance with law and dispose of the same as expeditiously as possible. As a sequel, miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

Date:17.09.2016
grk

A.V.SESHA SAI, J





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



C.R.P.No.1525 of 2010

Dated: 17.09.2016

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1. Munnar guest house – 10 kms – devikolan – 1 suite which is under renovation.
2. Cochin – Kerala high court guest house three rooms.
3. Godavairu – temple guest house.
4. Munnar and Tekdi private accommodation.
5. Allapuja – temple – boat Rs. 56,000/-

