

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

CIVIL PETITION No.4517 of 2016

ORDER:

This CRP is filed, under Article 227 of the Constitution of India, against the order passed by the XIV Additional Chief Judge, City Civil Court, Hyderabad in I.A. No.655 of 2012 in O.S. No.418 of 2008 dated 13.10.2015. The petitioner herein is the plaintiff in O.S. No.418 of 2008, and the petitioner in I.A. No.655 of 2012. The I.A. was filed under Section 151 C.P.C. to direct the contesting defendants in the suit (respondents herein) to initially let in evidence on their behalf, before the petitioner-plaintiff was called upon to do so.

The case of the petitioner, before the Court below, was that, since the defendants had taken the plea of resjudicata, it was for them to establish that the suit was barred by resjudicata and, therefore, they ought to let in evidence first before the petitioner-plaintiff can called upon to let in evidence on their behalf. By the order under revision, the Court below held that the petitioner had approached the Court for partition of the suit schedule properties; the burden was on him to let in evidence first to establish that the suit schedule property was capable of partition; the burden would thereafter be shifted to the contesting defendants to establish their contention that the principles of resjudicata are applicable to the suit; the petitioner's contention was, therefore, not acceptable; and there was no need to direct the defendants to let in evidence first.

Sri S. Balchand, Learned Counsel for the petitioner, would draw attention of this court to the issues framed earlier, and the issues recast later, to contend that all other issues are

consequential on the issues raised by the respondent-defendant; and, in such circumstances, the Court below erred in rejecting the petitioners claim that it was the defendants who ought to have let in evidence first.

The original issues framed in the suit are as under:

- (1). Whether the plaintiff is not entitled to seek partition of the plaint schedule property?
- (2) Whether the plaintiff not entitled to seek cancellation of judgment and decree dated 31.07.1998 passed in O.S. No.1117 of 1985 on the file of IV Senior Civil Judge, City Civil Court at Hyderabad?
- (3). To what relief?

The issues, recast on 07.06.2012, read as under:

- (1). Whether the plaintiff is entitled to partition in the plaint schedule properties?
- (2). Whether the plaintiff is entitled to seek cancellation of the judgment and decree dated 31.07.1998 passed in O.S. No.1117 of 1985 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad?
- (3). To what relief?

The first issue is whether the plaintiff is entitled to partition in the plaint schedule property. As has been rightly observed by the Court below, it is the petitioner who has sought partition of the suit schedule property. The burden is, therefore, on him to let in evidence first to establish that the suit schedule property is available for partition. I find no error in the order of the Court below, much less a patent illegality, in rejecting the petitioners contention that the defendants be called on to adduce evidence first. While a plea of resjudicate was no doubt taken, and has been framed as an issue, the Suit filed by the petitioner herein is for partition of the suit schedule property. As has been rightly observed by the Court below, the burden is on the petitioner-plaintiff to prove that the suit schedule property was available for

partition. Even otherwise the petitioner has not been able to show how he has suffered substantial prejudice thereby.

I see no reason, therefore, to exercise jurisdiction under Article 227 of the Constitution to interfere. The Civil Revision Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Date: 23.09.2016

MRKR

