

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION NO.1784 OF 2016

ORDER:

This Civil Revision Petition is filed against the order and decree, dated 06-01-2016 in C.F.R.No.1787 of 2015 in O.S.No.22 of 2001 on the file of the Junior Civil Judge, Wanaparthy.

2. The petitioners herein are the plaintiffs in the above suit, which was filed for partition of the suit schedule property against the 1st defendant and for perpetual injunction against the defendants 2 to 6. The said suit was decreed to the extent of partition and separate possession of the suit schedule property and it was dismissed as against defendants 2 to 6. Challenging the judgment of the trial Court, dated 06-04-2006, the petitioners herein, who are plaintiffs filed A.S.No.15 of 2006 insofar as the relief of perpetual injunction is concerned and the 1st defendant preferred an appeal in A.S.No.12 of 2006 against the decree for partition. Both the appeals were allowed by the learned Senior Civil Judge, Wanaparthy, vide common judgment, dated 14-09-2011 and remanded the matter to the trial Court for disposal afresh by taking into consideration the observations made in the common judgment.

3. After remand, when the suit was coming up for arguments, the petitioners herein filed an application for framing an additional issue with regard to jurisdiction of the trial Court to travel beyond the scope of observations made by the lower appellate Court in A.S.Nos.12 and 15 of 2006 on 14-09-2011. The petitioners sought the issue to be decided as a preliminary issue and the said application was dismissed holding that as per Order XIV CPC, issue can be framed basing on the assertion made by a party and the denial to the assertion made by another party and the present application would not fall within the ambit of Order XIV CPC and accordingly, rejected the same, vide order, dated 06-01-2016. Challenging the same, the present revision is filed.

4. Learned counsel appearing for the petitioners submits that arguments were already heard and the suit was reserved for judgment. The petitioners, who are plaintiffs in the suit, wants the lower Court to take into consideration the common judgment rendered by the lower appellate Court, Senior Civil Judge, Wanaparthy in A.S.Nos.12 and 15 of

2006, dated 14-09-2011 at the time of disposal of the suit.

5. It is pre-mature to think that the trial Court would not take the observations made by the lower appellate Court while remanding the matter to the trial Court at the time of disposal of the suit afresh. The petitioners could have argued on the point and it is not necessary for the trial Court to decide it as a preliminary issue. In the circumstances, this Court finds no grounds to admit the revision.

6. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending in this revision shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 07-04-2016

Hsd