

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4075 of 2016

ORDER:

1) Aggrieved by an order, dated 30.06.2016 passed in I.A.No.165 of 2016 in O.S.No.15 of 2005 on the file of the VII Additional District Judge, Madanapalle, wherein an application filed under Sections 151, 141 and 94 (e) of C.P.C. was rejected, the present Civil Revision Petition is filed.

2) The facts in issue are as under:

3) The petitioners are defendants 1 to 5 in O.S.No.15 of 2005 filed by the plaintiffs for partition and separate possession. Defendants 1 to 5 filed their written statement on 18.1.2005. Initially the suit is filed against defendant Nos.1 to 5. Later on defendants 6 to 9 were added as per the orders dated 30.10.2009 and defendants 10 and 11 were added as per the orders dated 30.06.2014. They filed their written statements on 21.04.2016 and 25.04.2016 respectively. On 28.04.2016 additional issues were settled and the case was posted to 30.06.2016 for trial. Meanwhile, defendants 1 to 5 filed I.A.No.165 of 2016 contending that the plaintiffs have no right to institute the suit for partition by taking shelter under Section 34 (2) of A.P.C.F. and S.V.Act, in view of memorandum of family arrangement-cum-agreement dated 30.08.1993, as the ancestor of the plaintiffs by name K.Krishnam Raju was also a party to it. Hence, it was urged that

the plaintiffs cannot dispute or disown the execution of the said family arrangement-cum-agreement. The said document was impounded by the District Collector, Chittor and fixed stamp duty penalty of Rs.1,05,000/-.

4) The Plaintiffs filed counter opposing the same contending that the suit schedule properties are ancestral and joint family properties and they are not divided by metes and bunds. It is stated that the alleged family arrangement-cum-agreement relied upon by defendants 1 to 5, is a forged and fabricated one. It is further contended that defendants 1 to 5 filed I.A.No.56 of 2007 under Order VII Rule 11 read with Sections 151, 141 and 94 (e) of C.P.C. which was dismissed on 27.10.2015 on merits. Again they filed the present petition only to delay the trial of the case.

5) After considering the rival arguments, the trial Court dismissed the said application. Challenging the same, defendants 1 to 5 preferred the present revision.

6) As seen from the record, the suit is of the year 2005. The trial Court rejected the I.A. on the ground that earlier defendants 1 to 5 filed I.A.No.56 of 2007 for the very same relief ie. to throw out the case of the plaintiffs before commencement of trial, which was dismissed on merits on 27.10.2015. While dismissing the said petition, the trial Court held that the defendants 1 to 5 failed to show any convincing or reasonable grounds. The plaintiffs contended that the document sought to be relied upon by the defendants 1 to 5 is a forged and fabricated one and the

suit schedule properties are ancestral and joint family properties. Since the issues involved disputed questions of fact the same has to will be decided after a full pledged trial. In view of the above and having regard to earlier order passed by the trial Court in I.A.No.56 of 2007, which was filed seeking the very same relief, I see no grounds to interfere with the impugned order and the Civil Revision Petition is liable to be dismissed.

7) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

26.08.2016
gkv

JUSTICE C. PRAVEEN KUMAR

