

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.1285 OF 2016

ORDER:

This Civil Revision Petition is filed against the order dated 22.02.2016 passed in I.A. No.39 of 2016 in O.S. No.729 of 2015 by VI Additional Junior Civil Judge, Vijayawada.

2) Heard learned counsel for the revision petitioner. Even served with notice on respondent Nos.2 & 3, thus failed to attend, hence taken as heard. Perused the material on record.

3) The revision petitioner is the respondent No.2 in I.A. No.39 of 2016, which was filed by the 2nd respondent herein to implead her as co-plaintiff claiming that she is the daughter of plaintiff No.1—Perumallu Muttu, who died pending suit. The 3rd respondent, who is defendant No.1 in the suit, is Tahsildar, Vijayawada Urban and 2nd respondent to the suit is the revision petitioner, who contested the matter by filing counter saying that the plaintiff—Muttu, in his life time, in the plaint itself he pleaded that he has no issues and the present petition is filed by Smt.Gomathi only to grab the property with no bonafides or any relationship and no material is placed on record particularly any documentary evidence before the lower Court.

4) It is observed that if the proposed party being brought on record, from her contest, as one of the legal representatives of the deceased, without prejudice to the adjudication in this regard, the petition was allowed. Impugning the same, the revision is maintained.

5) The submission of the learned counsel for the revision petitioner is that even if the deceased stated that he has no issues and even plaintiff No.2 claims as she is a daughter before the lower Court, there must be atleast some documentary basis of any prima facie known to form for anything to be left open to adjudicate in the suit from any view of complicated questions of fact requiring much oral evidence.

6) Here undoubtedly, the said Gomathi did not file any scrap of paper, prima facie to claim as daughter of Muttu, which is primarily required even to say either as sole or atleast as one of the legal representatives of the deceased, much less as a daughter to come on record, thereby the impugned order of the lower Court is liable to be set-aside.

7) Accordingly, the revision is allowed while setting aside the order of the lower Court in I.A. No.39 of 2016 dated 22.02.2016 and remitted the matter to the lower Court by giving liberty to both sides to produce any documentary evidence in support of their rival contentions and adjudicate afresh. No order as to costs.

8) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.19.09.2016
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