THE HON'BLE SRI JUSTICE G.CHANDRAIAH

C.R.P.NO.1249 OF 2016

O R D E R

Aggrieved by the order and decree dated 13.10.2014 passed by the court of II Additional Chief Judge, City Civil Court, Hyderabad in I.A.No.2735/2013 in O.S.No.858/2013, the defendants 7, 9, 11, 13 and 15 filed the present revision.

2. The respondents 1 and 2 herein filed the suit for partition of the plaint schedule properties and to pass preliminary decree by dividing the properties into 6 parts and to allot 1/6th share to each of the plaintiffs. Pending the suit, the plaintiffs filed the present I.A.No.2735/2013 in O.S.No.858/2013 under Section 151 of C.P.C. for a direction to the respondents 28, 29 and 30 – Food Corporation of India, A. P. State Civil Supplies Corporation and the Telugu Academy, which are the tenants of the suit I and J schedule properties i.e., godowns, to deposit the rents on the respective godowns, into the court. By the impugned order, the trial court allowed the I.A. and directed the said respondents to deposit the rents into court. Aggrieved by the same, the above contesting defendants filed the present revision.

3. The relationship of the plaintiffs and defendants 1 to 13, are all joint family members and the 1st defendant is the Kartha of the family.

4. The case of the plaintiffs is that in the year 1970, the firm Vijay and Co. was floated with the defendants and others and subsequently the firm was reconstituted and with the joint family funds, the firm was constituted and the business had grown and with the profits from the said business, the plaint schedule properties were purchased in the names of members of the joint family and other businesses were also started with the profits from Vijaya and Co., and six godowns were constructed at Chengicherla and ten godowns were constructed at Bibinagar by raising loans, and the income derived as rents from the said godowns were utilized for repayment of the loan and that the 1st defendant is collecting rents in respect of four godowns standing in the names of defendants 7, 13 and late Venkatesh, and since 2009 the contesting defendants are not sharing the rents in respect of share of the plaintiffs and, therefore, the

plaintiffs filed the petition seeking a direction to defendants 31 to 33 to deposit the monthly rents into the court, pending adjudication the suit for partition.

5. The defendants contested and filed their detailed counter affidavit denying the nucleus of the joint family and starting of business with the income derived from the Vijaya and Co., and that the properties were purchased in the individual names with the income from the joint family. It was pointed out that the plaintiffs sought directions only against the godowns belonging to D-9 and D-13 and did not seek deposit of rents of other godowns, as two godowns are in the name of D-3, three godowns are in the name of D-24, two godowns are in the name of D-26, two godowns are in the name of D-9 and D-13. It is stated that the lands on which the godowns are existing were purchased independently and by raising loans and by obtaining permission for construction, the godowns were constructed. The godowns were leased out and rents were being credited to the individual accounts and the same are being utilized as EMI for the loans obtained individually and the loans were not repaid in the year 2009, as stated by the plaintiffs, and they are not free from mortgage. The plaintiffs never requested for share in the rents, nor there is any refusal for partition and the partners of Vijay and Co., are not family members and there are third parties, who are enjoying the respective properties. It is stated that the plaintiffs are aware that the plaint schedule properties are self acquired properties and, therefore, they never demanded for partition and that the 1st defendant did not receive any income from the suit schedule properties, except to the extent of his properties. It is also stated that several suites are pending on the plaint schedule properties and unless the same are cleared, the properties cannot be considered for partition. With these averments, the I.A. was sought to be dismissed.

6. Based on the above pleadings, the trial court directed the respondents 28, 29 and 30 to deposit the rents into the court. Hence the present revision by the contesting defendants.

7. The learned counsel appearing for the petitioners submitted that there is no joint family property and that the claim of the present petitioners is that the property is the self acquired property and the loans were obtained by the petitioners independently by mortgaging the properties and they have entered

into lease agreements with the respondents 28 to 30 and have been receiving the rents, and there are also other properties, but the respondents/plaintiffs sought direction only in respect of I and J schedule properties, which are in possession of the petitioners and unless the issue whether the properties are joint family properties or not and whether they are liable for partition, is decided, the question of directing the tenants of the present petitioners to deposit the rent into the court, cannot be sought for. He submitted that because of the dispute, the tenants are not paying the rents and they have vacated and as such, they are unable to discharge the loans and the said loan accounts have become non performing accounts and the bank have issued notice under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'). The learned counsel has produced a copy of the notice dated 21.11.2015 issued by the Syndicate Bank to the 1st petitioner. He submitted that it is not the case of the plaintiffs that in the event of decreeing the suit, the plaintiffs/respondents cannot realize the amount from the petitioners and even before deciding the rights, direction of the trial court to deposit the rents, is not justifiable and therefore sought to set aside the impugned order.

8. On the other hand, the learned counsel appearing for the respondents supporting the impugned order submitted that the properties were acquired with the joint family funds and the other defendants in whose possession such joint family properties are there, are contributing income towards the joint family, but only the petitioners are not contributing and the trial court by considering the material on record, having prima facie found that there is joint ness in the properties, passed the impugned order and, therefore, there are no grounds to interfere with the impugned order and sought for dismissal of the revision.

9. In view of the above rival contentions the issue that arises for my consideration is whether the impugned order warrants any interference?

10. There is dispute with regard to the jointness of the properties and as per the submission of the learned counsel, the trial court has not yet started. The undisputed facts are that the properties stand in the name of the petitioners and they have obtained loans in their individual capacity by mortgaging the properties and they have leased the schedule properties to respondents 28, 29

and 30 by entering into lease agreements. The trial court also found that there are huge outstanding loans on the schedule properties and they are required to be discharged. The submission of the learned counsel for the petitioners is that the lease amount was not being paid and therefore, EMIs could not be paid and the loan accounts have become non performing accounts and notices were issued under the provisions of the SARFAESI Act and subsequently the godowns were vacated and still loans are not cleared and to save the properties and prevent the banks to put to auction, the amounts are required for payment of loans and to meet other expenditure.

11. It is to be further noticed that the case of the plaintiffs is that they are entitled to $1/6^{th}$ share in the schedule properties and the suit schedule properties would be in larger extents and the plaintiffs sought direction only in respect of the godowns which are in possession of the revision petitioners and did not seek deposit of rents which are in possession of other defendants. Of course, the case of the plaintiffs is that they are contributing income for the joint family. The petitioners have denied the same. Therefore, even assuming that the schedule properties are joint family properties, they are entitled to only $1/6^{th}$ share and they cannot seek for a direction to deposit the entire rents. Further, as already found by the court below, huge loans are outstanding, therefore sharing of the liability by the plaintiffs and other defendants is also required to be considered. The claim of the petitioners is that loans were availed by mortgaging the properties and the plaintiffs and other defendants have not been contributing for discharge of the loans and that each party is in possession and enjoyment of their respective properties.

12. Therefore, in my considered view, directing the petitioners to deposit rents without sharing the liability, may not be justified and while working out the equities, the properties can be shared along with the income and for that reason, there is no necessity to seek any direction to deposit the rental income into the court, which may not be beneficial to anybody and it is also not the case of the plaintiffs that they may not be able to recover, if at all it is proved during the trial that they are entitled to seek for partition to the extent of $1/6^{th}$ share in the plaint schedule properties. Further, as already noted above, the trial court found that the liability to the bank is not discharged and that the plaintiffs case that the

loans are discharged in the year 2009, is not correct. Therefore the order impugned in the revision is not sustainable and the petitioners are entitled to receive their respective rental income as per the lease agreements entered into with respondents 28, 29 and 30 and bank loans have to be discharged by them, as the properties are standing in the individual names. In these facts and circumstances, I am of the considered opinion that the impugned order is liable to be set aside, and in order to put at rest the controversy, it is appropriate to direct the trial court to dispose of the suit as expeditiously as possible.

13. It is also made clear that the parties have to work out the remedies after passing of the decree and without arriving at the conclusion, it is not proper to prevent the petitioners to receive the rents, when the properties are admittedly purchased in the individual names and constructions were made after obtaining necessary permissions from local body authorities and by obtaining loan from the banks individually. As the loans were obtained by the petitioners in their individual names, it is their bounden duty to discharge the liability and to receive the lease amount. Inasmuch as the other properties are also being claimed as joint family properties along with the plaint schedule I and J properties, it is not justifiable on the part of the plaintiffs to seek for direction only in respect of the present schedule properties, therefore on this ground also, the impugned order cannot be sustained.

14. For the foregoing reasons, the impugned order is set aside and the revision is allowed. The trial court shall dispose of the suit as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. No costs.

15. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

DATE:31—03—2016
AVS