

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.5699 of 2016

ORDER

This Civil Revision Petition is directed against the order dated 1.8.2016 passed in E.P.No.222 of 2014 in O.S.No.56 of 1973 by the Principal Senior Civil Judge, Ongole.

The decree holder filed O.S.No.56 of 1973 on the file of the Additional Senior Civil Judge, Ongole, against his adoptive father for partition and separate possession of the suit schedule property and consequent to the death of his father, during the pendency of the suit, he got the suit amended to be the one for recovery of possession of the suit schedule property. After amendment, one Rukmini Devi, claiming to be the second wife of father of the plaintiff got herself impleaded as 6th defendant and claimed right to the property under settlement deed-Ex.B9 allegedly executed by the father of the plaintiff in her favour in respect of A schedule and also Ex.B16-Will, dated 16.7.1963. The trial Court *vide* judgment dated 16.11.1981 held that the marriage between defendants 1 and 6 was void, but Ex.B9 settlement deed was valid. Challenging the said judgment and decree, the plaintiff filed A.S.No.787 of 1983 before this Court and this Court by judgment and decree dated 11.4.1997 held that the marriage between the defendants 1 and 6 was valid, but Ex.B9 settlement deed was void. Accordingly, the preliminary decree was passed allotting 1/4th share of the suit schedule

properties in favour of the 6th defendant. Challenging the said decree and judgment, 6th defendant preferred LPA No.183 of 2001 before a Division Bench of this Court. She appears to have executed Ex.A1 will and died on the next day i.e., 1.7.2003. The 7th judgment debtor filed an application to implead her as legal representative of the 6th defendant on the basis of the will alleged to have been executed by the 6th defendant on 30.6.2003 and on the directions of this Court, the trial Court conducted an enquiry regarding the genuineness and held that the will was proved. This Court in LPA held that Ex.A1-will marked before the trial Court was not valid and accordingly, dismissed the same with the following observations.

“The appeal is accordingly dismissed. However, if the alleged purchasers from defendant No.6 intend to work out their remedies, it shall be open to them to do so by instating separate proceedings. The result of the dismissal of this LPA would be that, the plaintiff shall be the absolute owner of the property, and even if defendant No.6 had acquired any rights in the joint family properties, they stand devolved upon the plaintiff.”

It appears that against the judgment and decree in the said LPA, the 7th judgment debtor preferred SLP before the Supreme Court and the same was dismissed. Thereafter, the decree holder filed EP 222 of 2014 and the 7th judgment debtor filed counter stating that since the properties are situated in the territorial jurisdiction of Addaki Court, the Court at Ongole is not having

jurisdiction. She further stated that she has been in possession of item No.3 and was not a party to the suit. Though she filed an application to get herself impleaded as legal representative of the 6th defendant in LPA No.183 of 2001 basing on a will, which was since disbelieved, her LR application was dismissed. The 8th judgment debtor filed a counter stating that the decree passed in LPA is not in conformity with the findings given in the judgment and the petitioner-decree holder cannot execute the decree against item No.2.

The Executing Court noticed that the EP was filed in respect of three items of properties, since other items of properties were already delivered to him by the tenants, after going through the judgment passed by the Division Bench of this Court in LPA 183 of 2001, allowed the EP on 1.8.2016 since the decree holder already filed E.A.No.1423 of 2011 for granting police aid and E.A.No.1422 of 2015 to permit him to take assistance of Mandal Surveyor, and the same were ordered.

Challenging the said order dated 1.8.2016, the present Civil Revision Petition is filed by the judgment debtor Nos.8 to 11.

Judgment debtor Nos.9 to 11 did not file any counter and 8th judgment debtor filed counter to the extent of item No.2 covered by the settlement deed before the trial Court. Though the trial Court held that the deed of settlement was valid, this Court in

A.S.No.787 of 1983 held that the settlement deed-Ex.B9 is void. The said judgment was confirmed by the Division Bench of this Court in LPA No.183 of 2001, dated 13.11.2013 and the purchaser, who is the 8th judgment debtor is given liberty to work out his remedies. It appears that the present petitioners filed EA No.906 of 2014 under Section 47 CPC seeking declaration that the decree holder is not entitled to take delivery of item No.1 of the schedule property till the rights of the petitioners-judgment debtors 8 to 11 are conclusively decided by the Court and the said application was dismissed on 16.12.2014.

In the circumstances, this Court sees no ground to interfere with the order passed by the Executing Court in E.P.No.222 of 2014, dated 1.8.2016.

Accordingly, the Civil Revision Petition is dismissed at the admission stage.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

9th December, 2016
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