

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.525 of 2016

JUDGMENT:

This Second Appeal under Section 100 of Civil Procedure Code (for short 'CPC') is filed challenging the concurrent findings recorded in O.S.No.220 of 2006 on the file of Additional Senior Civil Judge, Srikakulam, confirmed by the Appellate Court in A.S.No.11 of 2012, whereby the suit filed for partition by the appellant/plaintiff was dismissed on the ground that non-joinder of proper and necessary party to the suit since it is a suit filed for partition.

2. For convenience of reference, the parties to the appeal will herein after be referred, as ranked in O.S.No.220 of 2006 by Additional Senior Civil Judge, Srikakulam, throughout the judgment.

3. The Plaintiff filed the suit for partition of the schedule property against the respondent herein i.e., who is a brother, and admittedly, the plaint schedule property item Nos. 1 to 4 are the ancestral properties and item No.5 is the separate property of his father. But, the plaintiff claimed partition of the schedule property without impleading other legal heirs i.e., sisters of the plaintiff. The trial Court recorded a clear finding at para No.30 of the

Judgment dt.23.12.2011, confirmed by the Appellate Court, that other co-parceners i.e., sisters of the plaintiff, after Andhra Pradesh amendment to Hindu Succession Act, 1956 i.e., Section 29-A of H.S.Act, are entitled to a share on par with sons but they were not impleaded as parties to the suit and in their absence, the Court cannot decide the shares of individuals.

4. Defendant Nos. 1 and 2 filed common Written Statement denying the contents made in the plaint while admitting the relationship between plaintiff and defendants and mainly contended that the suit is bad for non joinder of proper and necessary parties, so also, mis-joinder of properties belonging to 3rd parties i.e., Item No.5, and prayed for dismissal of the suit.

5. On behalf of Plaintiff, PWs.1 to 3 were examined and Exs. A.1 to A.8 were marked. On behalf of defendants, Dw.1 was examined and Exs. B.1 to B.4 were marked.

6. Upon hearing argument of both the counsel and perusing the material available on record, the trial Court dismissed the suit, with costs.

7. By its Judgment dt.23.12.2011, the trial Court specifically recorded a finding that in the absence of other

co-parceners, the suit for partition is not maintainable and hence, the suit is bad for non-joinder of necessary party.

8. The law is well settled on this aspect and following the judgments reported in *Jahangirji and other v. K. Kumar*¹, the suit for partition, without impleading the proper and necessary parties i.e., co-sharers, is not maintainable and the suit is bad for non-joinder of proper and necessary parties. Therefore, the trial Court and Appellate Court rightly concluded that the suit is not maintainable for partition in the absence of other co-shares i.e., the sisters of the plaintiff. The question in dispute is already decided by the Courts below, which was confirmed by the Appellate Court, and that too it cannot be construed as substantial question of law under Section 100 of CPC and therefore, I find no substantial question of law in this appeal. Hence, the Appeal is liable to be dismissed.

9. Accordingly, this Second Appeal is dismissed at the stage of admission. No costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 20-09-2016.

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¹ 2012(4) ALT 253

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