

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 6362 OF 2009

ORDER:

This Civil Revision Petition is directed against the order dated 21.07.2009 in I.A.No. 174 of 2008 in O.S.No. 31 of 2000 on the file of the V Additional Senior Civil Judge (Fast Track Court) at Visakhapatnam.

The petitioner herein is the 4th defendant in the suit filed by the 1st respondent seeking the relief of specific performance of an agreement of sale or in the alternative, partition of suit 'A' and 'B' schedule properties into five equal shares. The plaintiff, Defendants 2, 3 and 4 are the offspring of one *Sri Parabrahmam* and Defendant No.1. Defendants 1 to 3 filed their written statements. Defendant No.1 claimed that the suit schedule property was her *Stridhana* property. Her written statement was adopted by Defendant No.4. Pending disposal of the suit, on 13.12.2008, Defendant No.1 died. Defendants 2 and 3, while denying the alleged agreement of sale set up by the plaintiff, supported her claim for partition of the suit schedule properties into equal shares. During the life time of Defendant No.1, the plaintiff, by giving up her claim for specific performance, sought for passing of the preliminary decree on the ground that Defendants 2 and 3 have agreed for partition of the suit schedule properties and she has no objection for partitioning the same. I.A. No. 174 of 2008 was filed by the plaintiff, the 1st respondent herein, to pass final decree in the suit against the defendants.

Considering the rival claims set up by the parties, the learned Judge, in exercise of the power under Order 32-A Rule 1 of

the Code of Civil Procedure, *vide* order dated 21.07.2009, allowed the I.A. and passed the preliminary decree with respect to Schedules 'A' and 'B' properties into four equal shares. In terms of the said order, on the same day, the suit was also decreed. It is this order dated 21.07.2009 in I.A.No. 174 of 2008 which is challenged in this Revision.

When the matter is taken up for hearing, learned counsel for the parties submit that against the judgment and decree dated 21.07.2009, whereunder the preliminary decree was passed, the petitioner has preferred an Appeal before the Court of the Principal District Judge, Visakhapatnam. In those circumstances, as the decree and judgment can be challenged in terms of Section 96 of the Code by way of an Appeal, the learned counsel request that the questions raised in the present Revision Petition may be left open to be adjudicated in the said Appeal.

In that view of the matter, this Civil Revision Petition is closed leaving liberty to the parties to raise all the grounds that have been taken, in the Appeal said to have been filed by the petitioner before the Principal District Judge at Visakhapatnam. No costs.

Consequently, the miscellaneous Applications, if any shall also stand closed.

CHALLA KODANDA RAM, J

27th December 2016

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