

THE HON'BLE SRI JUSTICE RAJA ELANGO
CIVIL REVISION PETITION No.754 of 2016

ORDER:

The petitioners preferred the present civil revision petition by invoking the provisions under Article 227 of the Constitution of India, being aggrieved by the order, dated 31.12.2015, passed in C.M.A. No.44 of 2015 by IV Additional District Judge, Kakinada, East Godavari District.

Heard and perused the material available on record.

The petitioners 1 to 3 and one late Murali Krishna are the brothers and the 7th petitioner is the sister of the respondent. Petitioner No.4 is the wife and 5 & 6 are the children of late Murali Krishna. The respondent filed O.S. No.146 of 2015 before the II Additional Senior Civil Judge, Kakinada, against the petitioners for partition of the plaint schedule properties i.e. item Nos.1 and 2 into equal shares and to allot one share to her. It is learnt by the respondent that during the pendency of the suit, the petitioners obtained permission for construction of housing complex in item No.1 of the plaint schedule property i.e. 310 square yards of vacant site with an upstairs building and are constructing the building, by demolishing the existing building and, therefore, she filed I.A. No.123 of 2015 seeking temporary injunction and also for appointment of an Advocate Commissioner. The petitioners filed counter denying the share of respondent by stating that the suit schedule properties are the self acquired properties of their father and that their father executed an unregistered will bequeathing item No.1 property in favour of his four sons i.e. petitioners 1 to 3 and late Murali Krishna and, therefore, the respondent has no right over the said property. Subsequently, during the course of trial in the said I.A., the petitioners filed unconditional undertakings stating that they will not claim the cost of construction and development in the construction

raised by them towards the share of the respondent, in case the respondent succeeds in the suit. The trial Court, after considering the contentions of both the parties, dismissed the application by observing as follows:

“Further the photographs filed by the respondents clearly shows that the respondents proceeded with constructions in the schedule property and if the respondents restrained from the proceeding with the further constructions, whatever the investment made by the respondents for the purpose of construction became useless and if the petitioner/plaintiff not succeeds in the suit proceedings, the said investment made by the respondents cannot be compensated and the respondents will suffer huge loss. Hence, I found the balance of convenience in favour of the respondents.”

Challenging the above order, the respondent filed CMA No.44 of 2015 before the IV Additional District Judge, Kakinada. The learned IV Additional District Judge allowed the appeal vide order and decree, dated 31.12.2015 by setting aside the order of the trial Court and granted temporary injunction, restraining the petitioners from making construction in Item No.1 of the suit schedule property. Aggrieved by the said order, the present revision is filed by the petitioners.

Learned counsel for the petitioners mainly submits that though the petitioners filed unconditional undertakings stating that they will not claim the cost of construction and development of the property in question, towards the share of the respondent in case, she succeeds in the suit, without taking into consideration the said undertakings, the learned appellate Court allowed the CMA restraining the petitioners from proceeding further with the construction and now also the petitioners are ready to give individual undertakings, afresh, undertaking not to claim any cost of construction or development towards the share of the respondent, if she succeeds in the suit and requested to permit them to proceed with the construction further in item No.1 of the suit schedule property. To that effect, the learned counsel has produced the copies of individual undertakings given by the petitioners.

This Court perused the unconditional undertakings produced by the petitioners i.e. (1) Nookala Radha, (2) Nookala Venkata Ramayya, (3) Nookala Ramakrishna, (4) Nookala Lakshmi Devi, (5) Nookala Bhaskara Balarama Murthy, (6) Machetti Chandra Kala and (7) Kommula Sairatnam, in which they undertake not to make any claim towards cost of the construction and development, which is now being carried out by them in item No.1 of the plaint schedule property, if the respondent succeeds to 1/6th share in the said item.

Recording the above unconditional undertakings given by the petitioners, this Civil Revision Petition is allowed, setting aside the order, dated 31.12.2015 passed in CMA No.44 of 2015 by the IV Additional District Judge, Kakinada thereby, restoring the order, dated 16.09.2015, passed in I.A. No.123 of 2015 in O.S No.146 of 2015 by the II Additional Senior Civil Judge, Kakinada. There shall no order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

RAJA ELANGO, J

June 29, 2016
KTL