

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3265 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 06.04.2016 passed in I.A.No.287 of 2016 in I.A.No.1039 of 2011 in O.S.No.203 of 2011 by the XI Additional Chief Judge, City Civil Court, Hyderabad, whereby, the Court below granted permission to the first respondent herein/2nd defendant to alienate her 1/4th undivided share of item No.1 of the suit schedule property.

2. It is the case of the revision petitioner/1st defendant that she and the 2nd respondent herein/plaintiff both have admitted the share of the 2nd defendant, i.e., 1/4th share in joint family property though she claimed 1/3rd share in the property and, therefore, she sought permission to alienate her undisputed undivided 1/4th share in item No.1 of the suit schedule property as there is no prohibition against alienating the undivided share.

3. The 2nd respondent herein was set *ex parte*.

4. The revision petitioner/1st defendant filed counter denying the material allegations contending that unless the share of parties are decided after full-fledged trial, the 1st respondent herein/2nd defendant is not entitled to alienate her undivided share till her exact share is decided after full-fledged trial and if she is permitted to alienate her undivided share, it would infringe the right of pre-emption of co-sharers and, therefore, there are no merits in the petition and the petition is liable to be dismissed.

5. After hearing both the learned counsel, the Court below permitted the 1st respondent herein/2nd defendant to sell her undivided 1/4th share in item No.1 of the suit schedule property.

6. Aggrieved by the same, the 1st defendant preferred this revision raising several contentions while reiterating the right of pre-emption conferred on the co-sharers to purchase the property and thereby, the 2nd defendant is not entitled to alienate the property and prayed to set aside the order passed by the Court below.

7. During hearing, Sri P.Raja Sripathi Rao, learned counsel for the revision petitioner contended that in view of Section 44 of the Transfer of Property Act, 1882, the revision petitioner is entitled to claim right of pre-emption, i.e., right to purchase the share of co-sharers and if the 2nd defendant is permitted to alienate his undivided share to others, certainly it will cause prejudice to the revision petitioner to her right of pre-emption and, therefore, prayed for setting aside the impugned order.

8. On the other hand, Sri Hari Sreedhar, learned counsel for the respondents, while supporting the order under challenge in all respects, placed reliance on the judgment of the Apex Court in **Gautam Paul Vs. Debi Rani and others**¹ and prayed for dismissal of the revision.

9. Undisputedly, the plaintiff filed suit contending that the plaintiff is entitled to 1/3rd share and the co-owners are entitled to

¹ (2000) 8 Supreme Court Cases 330

1/3rd share and whereas, the 1st defendant contended that she is entitled to 1/4th share and the remaining 3/4th share belongs to her in item No.1 of the suit schedule property, but whereas, the 2nd defendant admitted his undivided 1/4th share and sought permission to sell the her undivided share of property. The Court below granted permission, disbelieving the right of pre-emption.

10. The learned counsel for the revision petitioner/1st defendant contended that Section 44 of the Transfer of Property Act confers right to the revision petitioner to claim the right of pre-emption. Section 44 of the Transfer of Property Act mandates that where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires right in the other undivided property and such transferee is entitled to claim partition of property. Even according to Section 44 of the Transfer of Property Act, no right of pre-emption is conferred on the revision petitioner and even otherwise, there must be a custom in the family or by statute only that the revision petitioner is entitled to claim right of pre-emption. The revision petitioner did not plead either custom or any provision in the statute to claim right of pre-emption to purchase the share of the 1st respondent herein/2nd defendant. Therefore, the revision petitioner is not entitled to claim right of pre-emption.

11. in **Gautam Paul's** case *supra*, the Apex Court held that such a right can be claimed only in respect of dwelling house subject to condition laid down in Section 44 of the Transfer of Property Act.

In the present case, the purchaser is a stranger and is entitled to claim partition of the property being the transferee of undivided share or interest in the immovable property. Therefore, there is no absolute right of pre-emption to purchase the property of the co-sharers by the revision petitioner. Viewed from any angle, this Court finds that the order passed by the Court below does not suffer from any illegality calling for interference by this Court by exercising the power of superintendence under Article 227 of the Constitution of India. The revision is *de void* of merit and is liable to be dismissed.

12. In the result, the Civil Revision Petition is dismissed confirming the order dated 06.04.2016 passed in I.A.No.287 of 2016 in I.A.No.1039 of 2011 in O.S.No.203 of 2011 by the XI Additional Chief Judge, City Civil Court, Hyderabad. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

14th September, 2016
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