

**HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
HON'BLE Dr.JUSTICE B. SIVA SANKARA RAO**

-
C.M.A.No.1017 OF 2015
-

JUDGMENT: (Per NRR,J)

Heard the learned counsel for the appellants as well as the learned counsel for the respondents.

2. The C.M.A. is preferred against the order passed in I.A.No.1334 of 2015 in O.S.No.982 of 2014 by the IX Addl. Chief Judge, City Civil Court, Hyderabad. The appellants herein are the petitioners in I.A.No.1334 of 2015. They filed the said I.A. under Order IX Rule 13 of C.P.C. praying the Court to set aside the *ex parte* decree passed on 08.04.2015 and then permit the appellants to contest the main suit. While allowing this application by a very cryptic order, the learned IX Additional Chief Judge directed the suit costs to be deposited along with the written statement on or before 01.12.2015, failing which the application stands dismissed.

3. The suit is filed seeking partition and separate possession of the respective shares. In a suit for partition, the defendants also stand on equal footing with that of the plaintiffs. Therefore, the insistence of depositing suit costs cannot be justified. At any rate, when the suit gets decided finally, the issue relating to payment of costs can be decided by the Court.

4. Therefore, we set aside that portion of the order passed by the IX Addl. Chief Judge directing the appellants herein to deposit suit costs. Instead, the written statement said to have been filed may be taken and entertained and the matter tried on merits. In the event the suit gets decreed, the Court can consider whether the costs can be levied on the defendants or not.

4. In the result, the C.M.A. is allowed to the extent indicated supra.
Consequently, miscellaneous petitions, if any, pending in this Writ
Appeal, stands closed.

NOOTY RAMAMOHANA RAO, J

Dr.B.SIVA SANKARA RAO, J

Date: 03.03.2016.

VVR