

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Sri Justice G.Shyam Prasad
Civil Miscellaneous Appeal No.1024 of 2015

Date: 28.09.2016

Between:

Smt.Komal Rani

... Appellant

and

Smt.Anil Kumari and 3 others

... Respondents

Counsel for the Appellant: Mr.P.Rana Praveer

Counsel for respondent Nos.1 to 3: Mr.P.Thirumala Rao

The Court made the following:



Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Civil Miscellaneous Appeal (CMA) is filed against Order, dated 16-10-2015, in IA.No.2389 of 2012 in IA.No.1609 of 2007 in OS.No.417 of 2005, on the file of the II Additional Chief Judge, City Civil Court at Hyderabad.

The respondents have obtained a preliminary decree for partition in OS.No.417 of 2005. They have filed IA.No.1609 of 2007 for passing a final decree. In the final decree proceedings pending before the lower Court, the appellant has filed IA.No.2389 of 2012 under Order XXI Rules 97 to 103 of the Code of Civil Procedure, 1908 (CPC) for allotting to her 1/3rd share out of the sale proceeds of the suit schedule properties bearing Door Nos.15-3-19 to 15-3-21, situated at Gowliguda Chaman, Hyderabad, to be auctioned by the Advocate-Commissioner. This IA was dismissed by the lower Court on two grounds, one of which pertains to non-maintainability of the application.

The lower Court reasoned that a Claim Petition under Order XXI Rule 97 CPC is maintainable only in Execution Proceedings and that in the final decree proceedings pending

before it, such an application is not maintainable. Feeling aggrieved by this order, the appellant has filed this CMA.

Order XLIII Rule 1 CPC envisages an appeal against various orders mentioned in Clauses (a) to (w) thereof. Clauses (i), (j) and (ja) deal with the orders passed under different Rules of Order XXI CPC. Clause (ja) deals with an order rejecting an application made under Sub-rule (1) of Rule 106 of Order XXI CPC, provided that an order on the original application, that is to say, the application referred to in Sub-rule (1) of Rule 105 of that Order is appealable. Sub-Rule (1) of Rule 106 of Order XXI CPC deals with an *ex parte* order passed under Sub-rule (2) of Rule 105.

The learned Counsel for the appellant has not disputed that the order passed by the lower Court in the instant case does not fall under Sub-rule (1) of Rule 106 of Order XXI CPC as the said order was not passed to set aside an *ex parte* order.

In the light of the above discussion, we are of the opinion that the order impugned in this appeal is not an appealable order under Order XLIII Rule 1 CPC and the Registry has committed an error in entertaining the CMA and registering the same.

Accordingly, the CMA is dismissed as not maintainable, however, with liberty to the appellant to avail appropriate remedy available to her in law.

As a sequel to dismissal of the CMA, CMAMP.No.2123 of 2015, filed by the appellant for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(G.Shyam Prasad, J)

Dt: 28th September, 2016
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