

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1403 of 2016

ORDER :

The revision petitioner is no other than the daughter of the revision 2nd respondent and sister of the revision respondent Nos.1 and 3. The suit in O.S.No.115 of 2010 on the file of VII Additional District and Sessions Judge, Vijayawada, was filed by the plaintiff against 2 defendants, who are no other than his father and brother, for partition of the plaint schedule property into three equal shares and to allot one such share to him with separate possession.

2. It is pending the suit, the revision petitioner filed I.A.No.225 of 2015 seeking to implead her as a necessary party to the suit, for proper adjudication of the *lis* by workingout her right. It is her claim that the plaint schedule property is a co-parcenary property, as claimed also by the plaintiff, saying that she got a right by birth, as if a son, along with her brothers and father, and thereby she has to be brought on record, on her request.

3. The 2nd respondent, who is no other than her father (1st defendant) filed counter, supporting her claim and her right of a share.

4. The revision 1st respondent, who is no other than the plaintiff and her elder brother, and the revision 3rd respondent, who is no other than the 2nd defendant and her

2nd brother, resisted the application saying that there was already long back an oral partition effected on 30.05.1967 between them and thereby she is not entitled to claim any right, either under Act 13 of 1986 (with effect from 05.09.1985) or under the Central Act 39 of 2005 (with effect from 09.09.2005).

5. It is from the rival contentions, the lower Court, by the impugned order dated 07.01.2016, dismissed her application in I.A.No.225 of 2015 in O.S.No.115 of 2010, with the observation that there was already a registered partition dated 30.05.1967, vide Document No.1982/1967, executed between the father, her brothers and mother, and thereby, she is not entitled to claim any share.

6. In fact, it is also the observation in the impugned order, in the last but one para before the result para, that she already deposed on behalf of the father, the 1st defendant to the suit, mentioning that the plaintiff and 2nd defendant relinquished their rights in favour of their father, 1st defendant, by execution of a Relinquishment Deed and her father executed a Will on her behalf.

7. Having regard to the above, it was held that she is not a necessary party.

8. Sri G. Krishna Murthy, learned counsel for the revision petitioner, submits that the very Partition Deed of 1967 supra, itself shows that it is a co-parcenary property of the 1st

defendant, who is his father, and brothers and when such is the case, in the hands of 1st defendant, that fallen to his share, what is covered by the plaint schedule is a co-parcenary property and when there is no proof that it was whether actually effected partition by metes and bounds, as contemplated under Section 29(c) of the A.P. (Amended) Hindu Succession Act, 1956, by Act 13 of 1986, or by any registered Deed of Partition before 24.12.2004, as contemplated by Act 39 of 2005 and, as such, she is thereby a co-parcener, leave about what she deposed even before the lower Court, on behalf of her father, as a witness, saying that the plaintiff and the 2nd defendant, when relinquished the whole property, on co-parcenery in the hands of her father, she is entitled with her father, thereby enlarges the share and even she claimed in the Will that is subject to proof, she is entitled to the father's undivided share, apart from her right by birth, and thereby the lower Court went wrong in dismissing the application, instead of allowing the same, that too, when she is a necessary party, being a co-parcener, even from the plaint averments, referred to supra, of the ancestral property by birth and once, as if a son, she got an undivided 1/4th share, for non-joinder, the suit itself is fatal and liable to be dismissed. From a reading of Order I Rule 9, read with Section 13 C.P.C., even in considering the scope of Order I Rule 10 (2) of C.P.C., by the lower Court, it went wrong in non-consideration of the same.

9. Whereas, it is the contention of Sri Ramesh Babu Peddapalli, learned counsel for respondent Nos.1 and 3, that the impugned order of the lower Court holds good and for this Court, while sitting in revision, within the limited scope, there is nothing to interfere and that she is not a necessary party to meddle with the suit claim, particularly, when trial is mostly completed and almost reached for arguments stage, from the evidence of the defendants in progress, and the application is nothing but putting blocks for fair and early disposal of the suit, which is pending since 2010, and thereby sought for dismissal of the revision petition.

10. Heard learned counsel for the parties and perused the material on record.

11. Order I Rule 10 Clause (2) of C.P.C. speaks about the power of the Court to add or delete any party, at any stage of the proceedings.

12. The law is fairly settled, particularly, from the expression of the Hon'ble Apex Court in **Phoolchand Vs. Gopal Lal**¹, particularly in para-7, that so far as partition suits are concerned, if an event transpires after a preliminary decree, which necessitates a change in share, the Court can and should do so and, if there is a dispute in that behalf, the order of the Court is to decide that dispute and making variation in shares specified in the preliminary decree already passed, is a decree in itself, which would be liable to appeal,

¹ AIR 1967 SC 1470

however, this can only be done as long as final decree has not been passed.

13. The said expression of the Apex Court in **Phoolchand's** case (supra 1) is quoted with approval, in saying “an unmarried daughter of a co-parcener come on record, either pending suit or even subsequent to the passing of a preliminary decree, it is the duty of the Court, by considering the change of law as a subsequent event, even to a pending suit, to permit impleadment of the parties to workout the rights therein, instead of driving to a separate suit.

14. Same is quoted with approval by a Division Bench of this Court in **B. Chandrakala vs. A. Anuradha**².

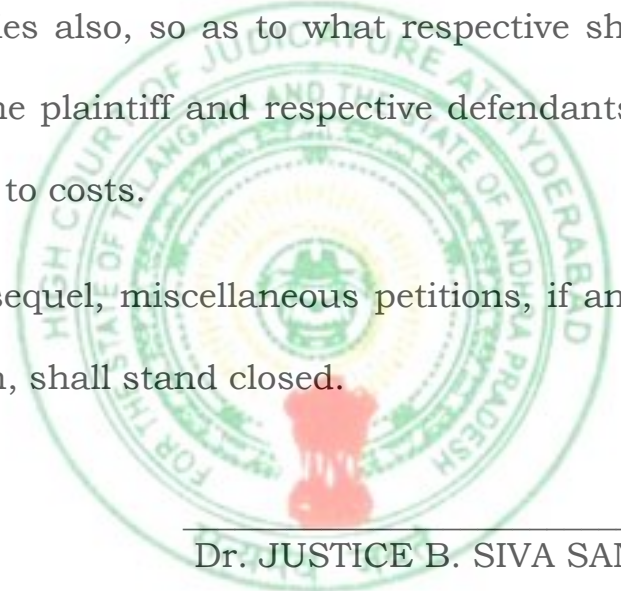
15. Once, such is the position of law and when the daughter claims as a co-parcener, on its face, she is a co-parcener. When this is undisputedly a co-parcenary property, that too, when the father is alive, for her right that survives not only under the A.P. Act 13 of 1986, for nothing to show her marriage was performed by 05.09.1985, but also even otherwise, independently, under Act 39 of 2005, with effect from 09.09.2005, the lower Court ought to have impleaded the revision petitioner to vindicate her rights to be decided before passing of a preliminary decree, to define any rights, if at all, she is entitled, so as to workout thereafter.

² 2015 (5) ALT 383

16. Having regard to the above, the impugned order dated 07.01.2016 passed by the lower Court is unsustainable and the same is liable to be set aside.

17. Accordingly, the Civil Revision Petition is allowed, setting aside the impugned order dated 07.01.2016, while allowing the application in I.A.No.225 of 2015 in O.S.No.115 of 2010, directing the lower Court to implead the petitioner therein as a 3rd defendant to the suit to workout her rights in the suit to be determined from any entitlement to her share in the properties also, so as to what respective shares, in such an event, the plaintiff and respective defendants are entitled. No order as to costs.

18. As a sequel, miscellaneous petitions, if any, pending in this revision, shall stand closed.



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02.09.2016.
Msr

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