

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MRS JUSTICE ANIS**

A.S.No.885 of 2015

JUDGMENT: (Per Hon'ble Sri Justice V. Ramasubramanian)

This regular appeal arises out of an order passed by the trial Court rejecting the plaint in a suit for partition.

Heard Mr. Sai Baba Itapu, learned counsel for the appellant and Mr. D. Prakash Reddy, learned Senior Counsel appearing for the 5th respondent. Though respondents 1 to 4 have not been served with notices in this appeal, we have taken up the appeal for hearing in view of the fact that it was at the instance of the 5th respondent herein that the trial Court chose to reject the plaint under Order VII Rule 11 C.P.C.

The appellant herein filed a suit in O.S.No.892 of 2008 on the file of the XI Additional District Court, Ranga Reddy District, seeking partition and separate possession of her 1/5th share in the suit schedule property and also seeking a declaration that the sale deeds executed on various dates in the year 2000 and 2003 by defendants 1 to 4 in the suit were illegal, null and void and not binding on her.

The defendants 1 to 4 in the suit were none else than three brothers and one sister of the appellant herein. The 5th defendant in the suit is a third party, who purchased the suit properties under several sale deeds dated 20.11.2000, 22.05.2003, 26.05.2003, 10.07.2003 and 9.10.2003.

After entering appearance in the suit, the third party purchaser, who was impleaded as 5th defendant in the suit, filed an application in I.A.No.417 of 2015 under Order VII Rule 11 C.P.C., seeking rejection of plaint on the ground that the appellant/plaintiff was not entitled to the benefit of Section 6 of the Hindu Succession Act 1956, as amended by Central Act, Act 39 of 2005. Accepting the said contention, the trial Court allowed the application by an order dated 11.09.2015 rejecting

the plaint in entirety. Therefore, the plaintiff is before us.

The parties have no dispute about the fact that the suit schedule property in entirety has not been purchased by the 5th defendant. What was purchased by the 5th defendant was only a part of the suit schedule property. Despite this fact, the trial Court rejected the plaint in entirety by taking recourse to Order VII Rule 11 C.P.C.

The case on hand would not fall within any of the clauses, viz., Clause (a) to (f) of Order VII Rule 11 C.P.C. This is not a case where the plaint did not disclose a cause of action. It is not a case where the relief claimed was undervalued. This is also not a case where the plaint was insufficiently stamped. The case was also not one that was barred by law. The provisions of Clauses (e) and (f) of Order VII Rule 11 are also not applicable to the case on hand.

The decisions of the Supreme Court in ***T. Arivandandam vs T. V. Satyapal & Another***^[1] and ***A.V. Papayya Sastry v. Government of A.P.***,^[2] are not applicable to the case on hand.

The question as to whether the appellant/plaintiff was entitled to the benefit of Section 6 of the Hindu Succession Act and the question as to whether the case of the appellant would fall under the proviso to Section 6 (1), are all questions of fact, which could not have been decided in an application under Order VII Rule 11 C.P.C. Therefore, the trial Court was completely unjustified in allowing the application under Order VII Rule 11 C.P.C. Hence the appeal is liable to be allowed.

Accordingly the appeal is allowed, the judgment and decree of the trial Court dated 11.09.2015 in I.A.No.417 of 2015 in O.S.No.892 of 2008 are set aside. The trial Court is directed to take up the suit, which is of the year 2008 and dispose it of in accordance with law, within a period of six months. The question as to the applicability of Section 6 shall be decided independently by the trial Court, depending upon the evidence let in by both the parties, without reference to the preliminary

observations contained in this order. There shall be no order as to costs.

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

JUSTICE V. RAMASUBRAMANIAN

JUSTICE ANIS

2nd August, 2016
Js.

[\[1\]](#) AIR 1977 SC 2421

[\[2\]](#) (2007) 4 SCC 221