

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4056 OF 2016

ORDER:

1) Heard learned counsel for the petitioner. In spite of service of notice, there is no representation on behalf of the respondents.

2) Aggrieved by an order dated 17.06.2016 passed in I.A.No.27 of 2012 in O.S.No.450 of 2001 on the file of the I Additional Junior Civil Judge, Madanapalle, Chittoor District, wherein an application filed under Section 152 read with 151 of the Code of Civil Procedure ("the C.P.C.") was dismissed, the present Revision is filed under Section 115 of the C.P.C.

3) The brief facts in issue are as under :-

The petitioner/plaintiff filed a suit for partition and for possession of his legitimate share in the suit schedule property. A preliminary decree came to be passed in favour of the petitioner/plaintiff directing the respondents/defendants to divide the petitioner's 4/27th share in Item No.1 of the suit schedule property and dismiss the claim with regard to other reliefs. Since no appeal has been preferred against the said decree, the judgment of the trial court in O.S.No.450 of 2001 has become final. Thereafter the present application came to be filed by the petitioner to amend the preliminary decree since a mistake has crept in while preparing

the decree. A counter in the said application came to be filed by the respondents stating that the petitioner is entitled for 4/27th share only in Ac.3.38 cents but not on total extent of Ac.6.30 cents, as pleaded. Hence, the respondents contend that the request for amendment of decree, cannot be accepted. After considering the rival arguments advanced, the trial court rejected the application holding that the Court cannot go beyond the preliminary decree. Challenging the same, the present Revision came to be filed.

4) Reiterating the arguments, which were advanced before the trial Court, the learned counsel for the petitioner would submit that the petitioner is entitled to 4/27th share of the total extent of land and not part of the land. He further submits that in view of the specific finding in para 14 of the Judgment, the petitioner is entitled to 4/27th share in Item No.1 of the plaint schedule property and the order rejecting the request is illegal and improper. As stated earlier, inspite of service of notice there is no representation on behalf of the respondents.

5) In order to appreciate the arguments advanced by the learned counsel for the petitioner, it would be useful to refer to the findings and also the contents of the judgment. Since the dispute is only with regard to Item No.1 of the plaint schedule property, the relevant portions, discussed in paragraph 12 of the Judgment, are as under:-

Originally Item No.1 of the plaint schedule property situated in Sy.No.358/2 with an extent of Ac.6.38 cents belongs to one Bisati Gangappa. The said Bisati Gangappa had three sons viz., Bisati Venkatesu, Bisati Lakshmanna and Bisati Chinna Gangappa and thus the three branches of B.Gangappa are entitled to $\frac{1}{3}^{\text{rd}}$ share in total extent of Ac.6.38 cents and thus each of the Branch is entitled to Ac.2.127 cents each i.e., $\frac{1}{3}^{\text{rd}}$ share. B.Venkatesu had two sons viz., B.Gangappa and B.Narasappa. The second son of B.Venkatesu went to Illatum to other village and he relinquished his half share out of $\frac{1}{3}^{\text{rd}}$ share to his elder brother Bisati Gangappa under a sale deed dated 07.08.1975. Thus, Gangappa became absolute owner of $\frac{1}{3}^{\text{rd}}$ share in Item No.1 of plaint schedule property and got Ac.2.127 cents. The said Gangappa had three sons, who died leaving his three sons viz., B.Venkatesu, who is first defendant, B.Chinna Venkatesu, who is father of the plaintiff and husband of P.W.2 and B.Jayanna, who is the second defendant in the suit. The $\frac{1}{3}^{\text{rd}}$ share succeeded to by late Gangappa after the division among three sons makes each of his son entitled to $\frac{1}{9}^{\text{th}}$ share in $\frac{1}{3}^{\text{rd}}$ share of total extent of Ac.6.38 cents. Further, the second son of late Gangappa viz., Chinna Venkatesu died leaving behind his wife who is examined as P.W.2 in the said suit and the son, who is examined as P.W.1. Thus, plaintiff and his mother P.W.2 are entitled to $\frac{1}{9}^{\text{th}}$ share of the total extent of Ac.6.38 cents of Item No.1 of the plaint schedule property. Thus both the defendants were entitled to $\frac{1}{9}^{\text{th}}$ share each. Having regard to

the genealogy the Court below settled that the plaintiff is entitled to $1/9^{\text{th}}$ share in total extent of Item No.1 of the plaint schedule property, derived by him through joint family from his ancestors. Insofar as the second branch is concerned viz., who is the second son of B.Gangappa namely Lakshmana, the Court after considering the genealogy held that each of the purchasers became entitled to $1/9^{\text{th}}$ share in Item No.1 of the plaint schedule proeptions i.e., Ac.6.38 cents.

6) In paragraph 14 of the judgment, which is relied upon by the learned counsel for the petitioner show that plaintiff, D-1 and D-2 purchased $1/9^{\text{th}}$ share of G.Reddeppa Reddy in Item No.1 of the plaint schedule property, which fact is admitted by the defendant in the written statement. Thus, all three of them are entitled to $1/27^{\text{th}}$ share in $1/9^{\text{th}}$ share of their vendor G.Reddeppa Reddy in Item No.1 of the plaint schedule property. Having regard to the above circumstances, the Court held that the plaintiff is entitled to $1/9^{\text{th}}$ share through succession and $1/27^{\text{th}}$ share by purchase of Item No.1 of the plaint schedule property from the vendor G.Reddeppa Reddy and thus become entitled to $4/27^{\text{th}}$ share in Item No.1 of the plaint schedule property. This finding has become final.

7) From the above, it is clear that the plaintiff is entitled to $4/27^{\text{th}}$ share, while each of the defendant is entitled for $11/54^{\text{th}}$ share of Item No.1 of the schedule property. The question now is,

whether the petitioner is entitled to 4/27th share of Ac.6.38 cents or Ac.3.30 cents?

8) The plaint, which has been filed before this Court, does not anywhere indicate the extent of land covered in Item No.1. The said column is blank. The fourth paragraph of the plaint, wherein the plaintiff gave particulars of his case, refers to Item No.1 of the plaint describing the extent of land as Ac.6.38 cents situated in Kurabalakota Revenue village. The schedule annexed to the decree, which has been prepared, shows that Item No.1 as Sircar Dry S.No.358/2 6-30 paiki Ac.3-38 cents. Since the schedule annexed to the plaint, which has been filed before the trial court, is not placed before this Court, it is difficult to accept the contention of the petitioner that the suit extent is Ac.6.30 cents and not Ac.3.38 cents. Therefore, the finding of the trial court that the petitioner is entitled to a share of 4/27th in Ac.3.38 cents appears to be correct. Hence, the request of the petitioner to amend the preliminary decree cannot be accepted.

9) Accordingly, the Civil Revision Petition is dismissed. No costs. As a sequel to it, miscellaneous petitions pending if any in this C.R.P. shall stand closed.

C. PRAVEEN KUMAR, J

Date:08.11.2016
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