

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

CRP Nos.2328 and 2657 of 2016

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Common Order :

These two Civil Revision Petitions arise out of common order dated 9.3.2016 passed in CMA Nos.13 of 2015 and 14 of 2015 by the Court of the Special Judge for trial of cases under SCs & STs (POA) Act –cum- Additional District & Sessions Judge, Vizianagaram.

The revision petitioner is the plaintiff in O.S.No.311 of 2010 on the file of the Court of the Senior Civil Judge, Vizianagaram. The said suit O.S.No.311 of 2010 was filed by the revision petitioner-plaintiff for preliminary decree of partition for partioning the schedule properties into 16 equal shares and for putting her in 5 such shares with relief of rendition of true and correct accounts of the profits realized from the schedule properties apart from costs of the proceedings. Pending the suit, the plaintiff-revision petitioner filed I.A.No.1348 of 2012 under Order 40 Rule 1 CPC seeking appointment of receiver for taking possession of the petition schedule properties and for the management and rendition of accounts pending disposal of the suit.

The trial Court on consideration of the material on record, and on hearing the arguments of both the parties, while declining to appoint the receiver by its order dated 13.7.2015 in I.A.No.1348 of 2012 in O.S.No.311 of 2010,

however, allowed the petition with costs directing the respondents 2 to 5 therein for depositing an amount of Rs.2,50,000/- being 5 years yielding value (commencing from agricultural year 2010 to 2014) of the share of the petitioner on or before 14.8.2015 and continue to deposit the amount at such rate for the succeeding agricultural years on or before 31st December every year till disposal of the suit, into the Court. The trial Court also observed that in default of complying any of the conditions, petitioner-plaintiff can make a formal request for nominating the name of the receiver and for issuance of warrant to that effect. The said order passed by the trial Court has been challenged before the lower appellate Court by respondent no.5 vide CMA Nos.13 of 2014 and respondent no.2 in CMA No.14 of 2015. The lower appellate Court by its common order dated 9.3.2016 in both CMA Nos.13 and 14 of 2015 set aside the order passed by the trial Court and dismissed the I.A.No.1348 of 2012, however directed the trial Court to dispose of the suit as expeditiously as possible within six months, holding that there is no basis for assessing the yield on the schedule property.

Being aggrieved by the said common order passed by the lower appellate Court, the present Civil Revision Petitions have been preferred by the plaintiff-revision petitioner herein.

Learned counsel for the petitioner submits that the

petitioner-plaintiff is entitled for 5/16th share in the schedule properties and that the respondents have been enjoying the usufruct deriving from the joint family properties without giving legitimate share to the petitioner and if it is continued further, the petitioner would certainly be deprived of her right of yield and also the schedule properties and suffer irreparable loss and damage.

Learned counsel for the petitioner relying on the decision of the Division Bench of this Court in **CHELIKAM RAJAMMA v. PADILETI VENKATASWAMI REDDY AND**

OTHERS [\[1\]](#) contended that the trial Court keeping in view the welfare of both the parties, took aggregate income derived from the schedule properties and directed the respondents for depositing of the amount of Rs.2,50,000/- till disposal of the suit and that the lower appellate court ought not to have interfered with the said order.

On the other hand, learned counsel for the respondents submits that the decision relied on by the learned counsel for the petitioner in CHELIKAM RAJAMMA's case (1 supra) is not applicable to the facts and circumstances of the case, as some properties are ancestral and some properties are self acquired properties as such there is no rational to exactly decide the quantum of amount to be deposited by the respondents in the Court below, therefore the order passed by the lower appellate Court does not suffer from

any infirmity warranting interference of this Court.

Having heard the learned counsel on either side, and upon perusal of the material on record, it is obvious that the petitioner filed the suit for partition claiming 5/16th share in the schedule properties and in the event of success, she may get her share in the property. As observed by the lower appellate Court, the assessment made by the trial Court in directing the respondents to deposit Rs.50,000/- as annual yield towards share of the petitioner does not appear to be on any rational basis or on the evaluation of the evidence on record. As the schedule properties include dry lands and wet lads, the lower appellate Court opined that all the issues raised by the parties can be considered during the trial including issues pertaining to ancestral and self acquired properties of the respondents; and that instead of passing interim order in receiver application that too five years after filing of the suit, as the suit itself is ripe for trial and parties are ready to proceed with the trial, more particularly when senior citizens are parties to the suit, the lower appellate Court has directed that the suit itself be disposed of within a period of six months. Considering the facts and circumstances of the case, in the interest of justice, I am of the view that the trial Court be directed to dispose of the suit itself within a period of three months from the date of receipt of copy of this order, as per law. At this stage, learned counsel for the respondents also fairly submitted

that the respondents are not going to alienate the suit schedule properties for the period of 3 months during the pendency of the suit. The same is recorded.

In the circumstances, Civil Revision Petitions are disposed of directing the trial Court to dispose of the suit itself within a period of period of three months from the date of receipt of copy of this order.

Subject to above, the Civil Revision Petitions are disposed of. Miscellaneous petitions pending, if any, shall stand closed. No costs.

G. SHYAM PRASAD, J

Date: 19.8.2016

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[\[1\]](#) 1993(2)ALT 154(D.B)