

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.124 OF 2016

ORDER:

The Civil Revision Petition is filed against the docket order dated 02.09.2015 passed in I.A. No.639 of 2009 in O.S. No.79 of 1995 on the file of Additional Junior Civil Judge-cum-XVII Metropolitan Magistrate, Cyberabad at Rajendranagar.

2) Heard learned counsel for the revision petitioners and learned counsel for the respondents. Perused the material on record.

3) Originally, the suit O.S. No.79 of 1995 was filed by Smt.Kuntur Rukamma on the file of Additional Junior Civil Judge-cum-XVII Metropolitan Magistrate, Cyberabad at Rajendranagar, for partition of the plaint schedule property of about five items or so, between the plaintiff and defendants 1 to 3. Pending suit, the plaintiff died and her legal representatives i.e., revision petitioners herein are impleaded as plaintiffs 2 and 3. The defendant No.4, who purchased some of the extents out of the schedule property after preliminary decree dated 19.03.1999, was impleaded pursuant thereto. Among the preliminary decree schedule properties in particular out of S.No.39, full extent of Ac.1.13 gts, leave about already alienated of Ac.0.60 gts there remained Ac.0.53 gts. There is another item in an extent of Ac.0.28 gts of S.Nos.155, 158 and 173 together, that is also liable for division. Therefrom, there is a final decree petition filed in I.A. No.639 of 2009 pursuant to the rights defined in the preliminary decree to be worked out between the parties *interse* and the advocate commissioner was appointed. After appointment of advocate commissioner, there is

further change in the factual scenario from the subsequent events by alienation out of Ac.0.53 gts, Ac.0.30 gts and Ac.0.12 ½ gts in S.No.39 (of which Ac.0.30 gts was in S.No.39 is by plaintiffs and defendants 1 to 3 to the 4th defendant and Ac.0.12 ½ gts is exclusively by defendant Nos.1 to 3 to the 4th defendant without joining the plaintiff). Thereby, at best, the 4th defendant is entitled to equity out of it, to allot to the share of the defendants 1 to 3. It is therefrom still available in S.No.39, Ac.0.10 ½ gts to the plaintiffs after considering the equity to 4th defendant to allot towards the share of plaintiffs pursuant to the preliminary decree. It is an undisputed fact that Ac.0.28 gts in S.Nos.155, 158 and 173 is also still available, which is also liable for partition between the plaintiffs and the defendants 1 to 3 pursuant to the rights defined in preliminary decree.

4) In fact, the advocate commissioner pursuant to the above on the application filed in I.A. No.105 of 2012 by the plaintiffs was appointed with modified warrant and he submitted the report. However, the plan reflects only as if S.No.158, instead of the extent of Ac.0.28 gts is in S.No.155, 158 and 173. Leave about the plan reflects what is remained in S.No.39, out of the total Ac.1.13 gts, after considering the extents alienated as referred supra, now remained Ac.0.10 ½ gts. What the commissioner's report, if at all, to take into consideration is excluding in that S.No.39, joint alienation by plaintiffs and defendants 1 to 3 of Ac.0.30 gts out of Ac.0.53 gts, to measure and demarcate the remaining Ac.0.23 gts and what the defendants 1 to 3 entitled therein is half share and plaintiffs entitled therein is half share and when such is the case for equities to be entitled to 4th respondent

for Ac.0.12 ½ gts purchased from the defendants, out of it, if at all to consider either to confine to the half share to be worked out after considering good and bad qualities therefrom of equal division of Ac.0.23 gts in S.No.39 to allot one share to 4th respondent on equities from what he purchased from defendants 1 to 3 and the other half to the plaintiffs. Further, out of the Ac.0.28 gts in S.Nos.155, 158 and 173, the plaintiffs are entitled to half share and the defendants 1 to 3 together are entitled to half share to divide equally by considering good and bad qualities. It is from the facts not in dispute what the trial Court observed is in spite of making some complications, remedy is left open to appoint fresh advocate commissioner; for this Court while sitting in revision, practically there is nothing to interfere from hearing of the revision petitioners—plaintiffs and 4th defendant, who claims through defendants 1 to 3. Thereby the revision is disposed of by giving sanctity to the order of the lower Court, however directing the lower Court to follow the following conditions, for more clarity:

a) The lower court shall issue, pursuant to this order, a fresh warrant by appointing Sri R.Lakshmi Shankar, advocate, (for appointment of him the parties came to consensus in the open Court) whose fee is fixed tentatively of Rs.10,000/- to measure and demarcate in the S.No.39 out of the total extent of Ac.1.13 gts by considering over all good and bad qualities of the land, the extent of Ac.0.53 gts and of it, what is sold by plaintiffs and defendants 1 to 3 to the 4th defendant of Ac.0.30 gts to exclude by showing in red colour and for the remaining portion of Ac.0.23 gts divide the same into two equal shares considering the good and bad qualities showing in blue and green colours and also to measure and

demarcate Ac.0.28 gts in S.Nos.155, 158 and 173 and divide into two equal shares considering good and bad qualities by showing in green and blue colours.

b) The Commissioner shall take assistance of Surveyor with reference to revenue record, earlier commissioner's report and also to answer the work memos of the parties given, if any, within its scope of warrant only. Further, for the execution of the warrant, the Commissioner is directed to act as per the further directions of the trial Court pursuant to this order. No order as to costs.

5) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dt.26.08.2016
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Dr.JUSTICE B. SIVA SANKARA RAO