

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.876 of 2015

Date: 04-01-2016

Between:

Gaddam Krishnaiah @ Sai Krishna Gaddam

.... Petitioner

AND

Gaddam Mutyalu and 2 others

.... Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.876 of 2015

ORDER:

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The petitioner herein is the plaintiff in O.S.No.353 of 1998 on the file of Principal Junior Civil Judge at Tiruvur. The said suit was filed for partition and a preliminary decree was passed on 28-06-1999. Thereafter, the petitioner filed I.A.No.62 of 2012 seeking appointment of an Advocate Commissioner to demarcate the suit schedule property by metes and bounds in four equal shares as per equity and to allot one such share to the petitioner/plaintiff and the 3rd respondent who is his brother by passing a final decree.

The defendants 1 and 2 filed I.A.No.165 of 2013 seeking permission of the Court to implead the legal heirs of Velpula Nagamma, sister of the defendants 1 and 2 and the plaintiff as party to the petition. A counter was filed stating that the said Nagamma died 30 years back and hence, she is not a necessary party. It was also stated that Hindu Succession (Amendment) Act, 2005 is applicable only to live persons, two sisters were already made

parties to the suit and the sister, who is no more, need not be made a party. The Court below framed the following two issues:

- 1) Now the point for consideration is whether the sisters of the petitioners and sisters of the respondents are liable to be impleaded as parties in preliminary decree?
- 2) Whether the preliminary decree passed by this Court, dt. 28.6.1999 is liable to be modified or can be passed another preliminary decree by impleading the necessary parties for re-allotment of shares in the preliminary decree?

The trial Court, considered the decision in **Ganduri Koteswaramma and another v. Chakiri Yanadi and another (2012 (1) ALT 29 (SC))** and held that the second preliminary decree can be passed or the preliminary decree can be altered or amended and accordingly, allowed the petition and directed the plaintiff to file an amendment petition in I.A.No.62 of 2012 by adding his sisters as legal representatives of the deceased sister of the petitioner as parties to the preliminary decree by order dated 29-01-2014. Challenging the same, the present Civil Revision Petition is filed.

Even after service of notices on the respondents and their counsel, none appeared for the respondents.

Learned counsel for the petitioner relied on an unreported decision of the Supreme Court in **Prakash and others v. Phulavati and others** dated 16-10-2015 and submitted that the amended provision is applicable only to living daughters of living coparceners as on 09-09-2005 irrespective of the date of birth of the said daughters. The relevant observation of the Supreme Court is as follows:

“.....Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of

when such daughters are born. Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation.....”

The above pronouncement makes it clear that the amended provision of Hindu Succession Act is applicable only to living daughters of coparceners. In the instant case, the proposed daughter(sister) died 30 years back and she cannot be a party to the present suit for partition.

In view of the same, the impugned order dated 29-01-2015 in I.A.No.165 of 2013 in I.A.No.62 of 2012 in O.S.No.353 of 1998 is set aside and the learned Principal Junior Civil Judge, Tiruvur is directed to proceed with I.A.No.62 of 2012 in O.S.No.353 of 1998 in accordance with law.

The Civil Revision Petition is allowed. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 04-01-2016

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