

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No.460 of 2016

02.09.2016

Between:

Godavarthi Dilip Varma

..Appellant

And

Godavarthi Venkatasubba Raju

..Respondent

Counsel for the appellant: Mr.M.R.L.Narasimha Rao

Counsel for the respondent: Mr.Madhava Rao Ambadipudi

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This civil miscellaneous appeal arises out of the order, dated 29.04.2016, in I.A.No.9 of 2016 in O.S.No.57 of 2015 on the file of the learned XV Additional District Judge, Nuzvid, Krishna District.

2. At the interlocutory stage, the appeal itself is taken up for hearing and disposal with the consent of the learned counsel for the parties.

3. We have heard Mr.M.R.L.Narasimha Rao, learned counsel for the appellant and Mr.Madhava Rao Ambadipudi, learned counsel for the respondent.

4. The respondent filed the aforementioned suit for partition of the suit schedule properties in two equal shares and for allotment of one such share, on the southern side, by metes and bounds, to him. In the said suit, the appellant filed the aforementioned I.A. under the Order XL Rule 1(a) read with Section 151 C.P.C. for appointment of an Interim Receiver for the entire suit schedule properties, for taking possession thereof for administration and management, and to deposit the income after deducting the cultivation and other expenses. The Court below, after hearing both sides, dismissed the I.A. by the order under appeal, with the finding that since the year 2003 till the date of the order, both the parties have been enjoying their respective shares of the properties and the yield therefrom. It was further observed that the appellant did not properly explain as to what made him to file the said I.A. for appointment of the Receiver when he was allowed to take the yield for more than 13 years. In his affidavit filed in support of the said I.A., the appellant, *inter alia*, averred that they inherited Acs.3.11 cents of land at Rajarajeswaripet, Vijayawada Rural from their father; that they jointly sold the said property

in the year 2003; that with the sale proceeds derived therefrom, the suit schedule properties were purchased and that the respondent has been looking after the maintenance and administration of the joint family properties and they are enjoying the same jointly, by developing the lands with the joint funds. In paragraph 7 thereof, he stated that he requested the respondent to render accounts for the years 2014 and 2015 and also for the year 2016, and that bearing grudge, the respondent resorted to the litigation, by filing the suit and withholding all the documents with him. He further averred that he apprehends that there is much danger to the undivided properties being wasted or mismanaged and that he is being prevented by the respondent and his henchmen from enjoying his share of the properties.

5. Under Order XL Rule (1) C.P.C., the Court is vested with the power to appoint a Receiver in respect of any property, before or after the decree. However, before appointing a Receiver, the Court must be satisfied that the property is in danger of being damaged or wasted. Mere bald allegation, without substantiating the same by adducing evidence, that the property may be damaged or the income may be misappropriated, is not sufficient to appoint a Receiver. No evidence, whatsoever, was produced by the appellant to prove that the respondent is indulging in the acts of waste. In these facts of the case, the Court below has rightly dismissed the I.A. filed by the appellant for appointment of an Interim Receiver. Hence, we do not find any reason to interfere with the order of the Court below.

6. The Civil Miscellaneous Appeal is, accordingly, dismissed.

7. As a sequel to dismissal of the C.M.A., C.M.A.M.P.No.894 of 2016 filed by the appellant for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

02nd September, 2016
GHN

