

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SMT JUSTICE T. RAJANI

AS.No.232 of 2017

DATED: 30.03.2017

Between

Kummari Narayana and others.

...APPELLANTS

And

Kummari Laxmamma and others.

...RESPONDENTS

COUNSEL FOR THE APPELLANTS: MR. T. LAKSHMI NARAYANA

COUNSEL FOR THE RESPONDENTS: MR. V.V. RAMANA – R10



THE COURT MADE THE FOLLOWING:

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

At the interlocutory stage, this appeal is heard and disposed of with the consent of both the parties.

2. The appellants have filed O.S.No.947 of 2007 on the file of the IV Additional District and Sessions Judge (FTC), Ranga Reddy District for partition and separate possession of the suit schedule property. They have impleaded respondents 1 to 9, the coparceners of the appellants as defendants 1 to 9 and respondent No.10, the purchaser of the suit schedule property from respondents 1 to 9, as defendant No.10. Respondents 1 to 9 were set *ex parte*. Since suit summons were not served on respondent No.10, he did not participate in the suit proceedings. The appellant No.2 examined himself as P.W.1 and got Exs.A1 to A26 marked on his side.

3. The Court below, based on the oral and documentary evidence, arrived at the conclusion that the appellants have made out a case for partition. However, it has taken into consideration the fact that under Ex.A22 sale deed, respondents 1 to 9 have sold the entire suit schedule property to respondent No.10 and the suit against respondent No.10 was dismissed for non-payment of process. The Court below has opined that in the absence of respondent No.10, no effective decree can be passed in favour of the appellants. On this ground alone, the Court below has dismissed the suit.

4. After hearing Mr. T. Lakshmi Narayana, learned counsel for the appellants and Mr. P.V. Ramana, learned counsel for respondent No.10, we are of the opinion that non-suiting the appellants only on

the ground of non-payment of process for respondent No.10 seriously prejudices their interests. The Court below, having held that the appellants have made out a case for partition, was constrained to dismiss the suit only on the ground of non-payment of process resulting in non-service of summons on respondent No.10. On these facts of the case, we are of the opinion that if the decree of the Court below is allowed to stand, it results in failure of justice.

5. Accordingly, the judgment and decree of the Court below are set aside. The suit is restored to file. The Court below is directed to issue fresh summons to all the respondents and decide the suit afresh by permitting the parties to let in fresh evidence. It is needless to observe that the Court below shall not be guided by any of the findings rendered in the judgment under appeal while disposing of the suit afresh. The Court below shall allow the parties to file their pleadings/additional pleadings and let in further evidence.

Subject to the above observations, the appeal is allowed to the extent indicated above.

As a sequel to the disposal of the appeal, ASMP.Nos.584 of 2017 is disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

T. RAJANI, J

March 30, 2017
DSK