

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1581 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant No.4, assailing the order, dated 09.02.2016, of the learned Senior Civil Judge, Darsi, passed in a memo in C.F.R.No.1042 of 2010 in O.S.No.103 of 2009.

2. I have heard the submissions of Sri M.Sudheer Kumar, learned counsel for the petitioner/4th defendant, and of Sri O.Manohar Reddy, learned counsel for the respondents 1 and 2/plaintiffs. I have perused the material record.

3. The facts of the case, in a nutshell, are as follows:-

The plaintiffs brought the suit against the defendants for partition of the suit schedule properties and for passing a preliminary decree for partition of the plaint schedule properties as prayed for in the plaint. In the plaint, it is specifically pleaded that the plaint schedule properties are to be divided into 5 equal shares and that a 1/5th share in item no.1, a 1/10th share in the 1/5th share of one Mastan Ali shall be allotted to the 1st plaintiff and a 1/10th share in the 1/5th share of said Mastan Ali shall be allotted to the 2nd plaintiff and that the item no.2 of the plaint schedule property shall be divided into five equal shares and 2/10th share in a 1/5th share shall be allotted to the plaintiffs 1 and 2. It is also stated that if such division is not possible, a direction be given to sell the properties and divide the sale proceeds among the parties.

A decree simultaneously for mesne profits and other reliefs was also sought for in the plaint. The 4th defendant is one of the contesting defendants. During the pendency of the suit, the plaintiffs filed a memo, dated 22.04.2010, submitting that the claim of the plaintiffs in respect of the land described in item no.1 of the plaint schedule properties is settled out of the Court and, therefore, they are not pressing and withdrawing the suit in respect of the said item of property. And, by filing the said memo, the plaintiffs requested the Court to dismiss the suit without costs in respect of item no.1 of the plaint schedule properties. The 4th defendant filed detailed objections resisting the said memo. However, the trial Court accepted the claim by the plaintiffs in the said memo. Therefore, the aggrieved 4th defendant is before this Court.

4. At the hearing, the learned counsel for the 4th defendant, apart from making submissions on the merits of the matter, forcefully contended that the order that was passed on the strength of the memo, which is under challenge in the present petition, is unsustainable, as this Court, in Syed Yousuf Ali Vs. Mohd. Yousuf and others¹ held that a judicial order cannot be passed on a memo. In that view of the matter, the learned counsel for the plaintiffs fairly submits that since the judicial order, which is impugned in this revision, is passed on a memo filed by the plaintiffs, the order impugned may be set aside reserving liberty to the plaintiffs to file an appropriate application seeking the same relief.

¹ 2016 (3) ALD 235

5. Recording the said submission of the learned counsel for the plaintiffs, this Civil Revision Petition is allowed and the order impugned is set aside, however, reserving liberty to the plaintiffs to file an appropriate application for the same relief. It is made clear that if any such an application comes to be filed by the plaintiffs, the trial Court shall first give an opportunity to the contesting defendants to file counters, if any, and then hear and dispose of the said application on its merit and in strict accordance with the procedure established by law. Nevertheless, considering the fact that the suit is of the year 2009, the plaintiffs are directed to file the fresh application, if they so desire, within a period of two (02) weeks from the date of receipt of a copy of this order; failing which, the plaintiffs shall be precluded from filing any such application and the trial Court shall proceed with the further trial of the suit.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

28th August, 2017
Bvv

M.Seetharama Murthi, J