

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.5780 of 2011

ORDER :

This Civil Revision Petition is filed challenging the order dt.02.12.2011 in I.A.No.147 of 2011 in O.S.No.114 of 2010 of the Senior Civil Judge, Sathupally.

2. Petitioner and 4th respondent are husband and wife. The 5th respondent and one Laxma Reddy were their children. The 3rd respondent was married to Laxma Reddy and respondents 1 and 2 are their children. Laxma Reddy died on 08.05.2008 leaving the respondents 1 to 3 as his legal heirs.

3. The respondents 1 to 3 filed O.S.No.114 of 2010 on the file of the Senior Civil Judge, Sattupally for partition of the plaint schedule properties, for mesne profits and costs.

4. In the plaint, the 3rd respondent alleged that some of the suit schedule properties are ancestral properties and the other are acquired with the nucleus of ancestral properties. She contended that although she received Rs.3,80,000/- after the death of her husband as nominee under an insurance policy, the petitioner made her to deposit the same in a bank and he withdrew the said amount and invested in agriculture and for other purposes. She stated that in August, 2010, she requested the petitioner to admit the respondents 1 and 2 in any school which imparts better education and to keep apart some money for education of

respondents 1 and 2, but the petitioner and the 5th respondent got angry, picked up a quarrel with her, snatched away her gold ornaments and drove her out of the house along with the children. She stated that when her parents, along with elders, requested the petitioner and 5th respondent for partition of undivided joint family properties and for allotment of share of her late husband, they refused for partition and insulted respondents 1 to 3 and therefore, she filed the suit for partition.

5. Written statement was filed by the petitioner stating that only some of the properties mentioned in the plaint schedule are joint family properties and the remaining were his self acquired properties. He mentioned that he suffered certain losses in business and also had to clear some debts of himself and as well as that of his son. He denied that the amount of Rs.3,08,000/- received from the insurance after the death of his son were utilized by him and claimed that the 3rd respondent withdrew the amount through her paternal uncle. It was denied that he refused to partition the properties and stated that he was ready and willing to allot legally entitled shares of respondents 1 and 2 to them in the joint family properties.

6. I.A.No.147 of 2011 was filed by the respondents 1 to 3 invoking Sections 19 and 22 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'the Act') seeking maintenance of Rs.5,000/- to each of the respondents 1 to 3.

7. In the said application, respondents 1 to 3 reiterated plaint averments and contended that they would get 1/3 share in the plaint schedule properties, that respondents 1 and 2 who were students of Class-VII and Class-IV required maintenance to pay for their education, food, shelter, cloths, that all the suit schedule properties are in the enjoyment of the petitioner, that the petitioner had taken away the 3rd respondent's gold ornaments and drove her, along with respondent 1 and 2, out of the house, and that the 5th respondent is dependent for food, shelter, cloths and for education of her children on her father, who is a middle class farmer, that he had suffered heart attack and there is a need of money to meet their necessities.

8. Counter affidavit is filed by the petitioner to the said application reiterating the stand taken by him in the written statement, that he was ready and willing to allot legally entitled share of respondents 1 to 3 from the joint family properties without any delay. It is further stated that the income derived from the admitted joint family properties is not at all sufficient for the petitioner to provide maintenance to respondents 1 to 3 by keeping them separately and that the respondents 1 to 3 should come and live with the petitioner and his family and they would then meet all the expenses of the respondents 1 and 2. It is asserted that the 3rd respondent is working as a Teacher in a private school at Sattupally and getting a monthly salary and it is

stated therefore that there is no obligation to pay maintenance to respondents 1 to 3.

9. By order dt.02.12.2011 the Court below allowed the said application. It held that the petitioner is liable to pay maintenance of Rs.3,000/- each to respondents 1 to 3 per month from the date of petition till disposal of the main suit towards their maintenance out of the estate of the deceased and also to pay costs of Rs.1,000/-.

10. Challenging the same, this Revision is filed.

11. Counsel for the petitioner contends that the order passed by the Court below is unsustainable and that the application seeking maintenance itself under the provisions of the Hindu Adoptions and Maintenance Act, 1956 in a suit for partition of properties is not maintainable. He however did not cite any authority in support of the said propositions. He stated that preliminary decree was passed in the suit on 27.01.2011 in I.A.No.3 of 2012 on an application filed under order XII Rule 6 of Civil Procedure Code by him, but he admitted that no final decree is passed till date by dividing the properties by metes and bounds.

12. Merely because some properties were directed to be divided under preliminary decree on 27.01.2015, till those properties are delivered possession to respondents 1 to 3, the obligation of the petitioner under Section 19 of the Act cannot be avoided and it has to be implemented. The offer of the petitioner to respondents

1 to 3 that they should come and live with him and his family is not acceptable to respondents 1 to 3 on account of the strained relationship between the petitioner and the 3rd respondent, and the petitioner cannot insist that unless the 3rd respondent comes and lives with his family, and he should provide the necessities to respondents 1 to 3.

13. It is not disputed that even the father of the 3rd respondent had died, and no evidence has been let in by the petitioner that the 3rd respondent is gainfully employed or that she had exclusive use of the insurance money, in order to ensure that respondents 1 and 2, who are minors, are properly taken care of and their necessities are met.

14. It is obligatory on the part of the petitioner, who admittedly has custody of all the plaint schedule properties, to provide maintenance to respondents 1 to 3 under Section 19 and 22 of the Act. The admitted joint family properties would yield sufficient income to meet the necessities of petitioners.

15. Though the petitioner filed I.A.No.3 of 2012 to pass judgment on admission invoking order XII Rule 6 CPC resulting in preliminary decree in respect of some of the plaint schedule properties on 27.01.2015, he has not bothered to immediately get a final decree passed dividing the properties by metes and bounds and affect delivery as per the said decree. This speaks volumes

about his conduct and justifies the stand of respondent 1 to 3 in refusing to live with the petitioner.

16. I am of the opinion that the Court below has rightly considered the material evidence on record and the conduct of the petitioner and his legal liability under Sections 19 and 22 of the Act and directed him to pay a sum of Rs.3,000/- to each of the respondents 1 to 3 every month from the date of filing of I.A.No.147 of 2011 till disposal of the main suit.

17. Therefore, this Civil Revision Petition is dismissed. Admittedly, even though there is no stay order granted by this Court, the petitioner has not complied with the said order. So, the petitioner is granted three (03) weeks time from today to comply with the said order and he shall also pay costs of Rs.5,000/- to the respondents 1 to 3. The Court below is directed to dispose of the suit, which is of the year 2010, as expeditiously as possible, preferably within a period of six (06) months from the date of receipt of a copy of this order.

18. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

24th January, 2017.

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