

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1712 of 2017

ORDER:

1) Assailing the order dated 08.09.2016, passed in I.A.No.905 of 2015 in I.A.No.39 of 2006 in O.S.No.596 of 2002 on the file of the II Additional Junior Civil Judge, Chittoor, wherein an application filed under Section 151 of C.P.C. to dismiss the final decree petition, was dismissed, the present Civil Revision Petition came to be filed under Section 115 of C.P.C.

2) The facts in issue are as under:

Respondent Nos.1 to 3 herein filed O.S.No.596 of 2002 seeking partition of the schedule property into two equal shares and to allot one such share to respondent Nos.1 to 3 and defendant Nos.3 and 4 and allot remaining half share to defendant Nos.1 and 2 therein. The said suit was decreed on 08.04.2005 and a preliminary decree was passed. Thereafter, the plaintiffs therein ie. Respondent Nos.1 to 3 herein filed I.A.No.39 of 2006 to appoint an advocate-commissioner to divide the schedule properties into two equal shares by taking into consideration the good and bad qualities and to allot one such share and deliver possession of the same. Pending the said application, the petitioner, who is

defendant No.1 in the said suit, filed a petition to dismiss the final decree petition stating that pending enquiry, the wife of plaintiff No.2 by name K.Krishnamma filed a partition suit vide O.S.No.329 of 2014 with regard to same schedule property and it will lead to multiple of proceedings.

3) After considering the material on record, the trial Court dismissed the said petition. Challenging the same, the present Civil Revision Petition is filed.

4) Learned counsel for the petitioner would submit that since certain portion of the suit schedule property in both the suits are overlapping, it would be just and necessary that final decree proceedings are stalled till the disposal of O.S.No.329 of 2014.

5) The same is opposed by the learned counsel for the respondents contending that there is any amount of doubt as to the extent of overlapping in Sy.No.283, which is now shown as Sy.No.283/ 4A and 283/ 4B in O.S.No.329 of 2014. He further submits that when the shares of the parties are already determined in O.S.No.596 of 2002, the question of stalling the final decree proceedings would not arise.

6) In order to appreciate the same, it would be useful to refer to the plaints of both the suits. It is not in dispute that O.S.No.596 of 2002 was filed by Kacherla Venkataswamy,

Kacherla Doraswamy and Smt.A.Punyavathi against Sakunthamma (Petitioner herein) and six others seeking partition, whereas O.S.No.396 of 2014 was filed by K.Krishnamma, against K.Sreenivasulu and seven others seeking division of properties. The petitioner herein was shown as defendant No.8. The plaintiff in O.S.No.396 of 2014 is none other than the wife of second plaintiff in O.S.No.596 of 2002. There appears to be some difference with regard to the properties which lead to filing of the suits. It is to be noted that the schedule property shown in O.S.No.396 of 2014 is as under:

“Chittoor District – Chittoor sub-District – Yadamari Mandal – Kasiralla Revenue Village Accounts – lands are situated at Kasiralla Village.

1. Sy.No.153/ 7 Dry Ac.0.4 1/ 3 cents full
2. Sy.No.153/ 8 Dry Ac.0.14 1/ 3 cents full
3. Sy.No.136/ 3 Dry Ac.0.39, 0.03 cents full
4. Sy.No.283/ 4A Dry Ac.0.69 cents full
5. Sy.No.283/ 4B Dry Ac.0.69 cents full”

7) From the above, it is difficult to determine which portion of the land is overlapped even, if the same is said to have been overlapped as no boundaries are given to the above survey numbers. The suit schedule properties mentioned in O.S.No.596 of 2002 are different from the

schedule properties mentioned in O.S.No.329 of 2014 except some resemblance to two survey numbers, shown as 283/ 4 and 283/ 4 in O.S.No.596 of 2002 and in O.S.No.329 of 2014 they are shown as 283/ 4A and 283/ 4B. Specific boundaries are shown to these lands in O.S.No.596 of 2002 but no such boundaries are shown to the lands in O.S.No.329 of 2014. Hence, it would be difficult to say that both the properties are one and the same and they are overlapping, at this stage.

8) Having regard to the circumstances stated above and since the shares of the parties are already determined in O.S.No.596 of 2002, this Court is of the view that there is no illegality or irregularity in the order passed by the trial Court.

9) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

10) Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

11.08.2017
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