

HONOURABLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION NO.3798 OF 2011

Date: 30.11.2017

Between:

Goli Venkata Subbamma, W/o. Jaya Ramaiah,
Aged about 55 years, R/o. Near Temple, SVN Colony,
Guntur and others.

.....Petitioners

and

Vadduri Maha Lakshamma, w/o. Raghavaiah,
Aged 60 years, Cultivation, R/o. Lam Village,
Guntur District (died) and others.

.....Respondents



The Court made the following:

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ORDER:

Heard Sri V.Venugopala Rao, learned counsel for petitioners, Sri P.Vijaya Kiran, learned counsel for respondent no.18. No appearance for respondents 2 to 17, 19 to 27. Cause title of the revision discloses that respondents 28 to 76 are not necessary parties. Parties are referred to as arrayed in the suit.

2. Original Suit No.01 of 1973 is instituted praying to grant decree of partition. Though partition was sought in several extents of properties, on 27.11.1975 preliminary decree was granted only to the extent of 1/7th share in the immovable property standing in the name of late G.Kotayya and direction was issued to put the plaintiff in possession of one such share. The suit was dismissed with reference to the rest of the claims. Appeal Suit No.376 of 1977, preferred against the said decree, was dismissed by judgment dated 18.10.1979, affirming the decision of lower Court. I.A.No.265 of 1982 is filed to grant final decree and the same is pending consideration of Court of II Additional District Judge, Guntur. While so, I.A.No.232 of 2011 is filed praying to amend the preliminary decree. It was contended that rest of shares in the properties standing in the name of late G.Kotayya are not mentioned in the preliminary decree and the rest of shares be allotted to the defendants 1 to 6. On consideration of respective submissions, by order, dated 06.04.2011, Court below has allowed the said I.A. However, Court below not only granted prayer of apportionment of rest of shares in the properties standing in the name of late G.Kotayya to the defendants 1 to 6, but having taken

note of demise of 6th defendant, the Court below has also gone further and directed apportionment of the property falling to the share of 6th defendant to the plaintiff and defendants 1 to 5. Aggrieved by the said order, this revision is filed.

4. During the course of submissions, learned counsel for petitioners fairly submitted that petitioners have no objection to the first limb of the order passed in I.A.No.232 of 2011, but petitioners have serious grievance against the 2nd limb of the order i.e., apportioning the property falling to the share of 6th defendant, on her demise, to plaintiff and other defendants and such order would amount to going beyond the original decree and, therefore, it is not permissible.

5. In response to this contention, learned counsel representing 18th respondent fairly submits that modifying the preliminary decree by the 2nd limb of the order under revision does amount to exceeding the very issue agitated in the suit and preliminary decree granted by the Court below. As there is no appearance for other respondents, Court safely concludes that they have no objection to the order the Court proposes to pass.

6. In view of the submissions made by the learned counsel for petitioners and learned counsel for 18th respondent, the Court is not recording the respective contentions on merits on various aspects.

7. Having regard to the fair submissions made by the learned counsel for petitioners and learned counsel for 18th respondent, the following order is passed:

i) The order of the Court below in I.A.No.232 of 2011 to the extent of amending the preliminary decree as under:

“that defendants 1 to 6 may be allotted one such share each in the properties of G.Kotaiah”, after the words “the plaintiff be put in possession of one such share” is upheld.

ii) the further direction of the Court below to further amend the preliminary decree to incorporate apportionment of the shares to plaintiff and defendants 1 to 5 in the property falling to the share of 6th defendant, on her demise, in accordance with the amended preliminary decree is set aside.

8. However, it is needless to observe that it is open to the parties to work out their remedies as available in law with reference to the properties falling to the share of 6th defendant in accordance with the preliminary decree as amended.

9. Civil Revision Petition is accordingly disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE P.NAVEEN RAO

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