

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5866 OF 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed challenging the Order dated 11.11.2016 in I.A. No.577 of 2016 in A.S. No.17 of 2016 passed by the V Additional District Judge, Medak at Sangareddy.

The learned V Additional District Judge, upon hearing the argument of both the counsel, dismissed the I.A. No.577 of 2016 by order dated 11.11.2016 filed for suspension of the decree and judgment in O.S. No.27 of 2005. Aggrieved by the said order, the present revision petition is filed challenging the propriety and legality of the order passed by the appellate court.

The trial court passed a preliminary decree for partition declaring the respective shares. Aggrieved by the Decree and Judgment, an appeal is filed along with the application for grant of stay. But the appellate court denied to grant stay on various grounds and the main reason for denial of stay is, when shares of individuals are ascertained, the case has become final, thereby suspension of the decree and judgment dated 26.04.2016 in O.S. No.27 of 2005 passed by the Senior Civil Judge does not arise.

In any view of the matter, the trial court appears to have been passed the decree without specifying, whether decree is preliminary or final. It is the subject matter of the appeal. However, in the operative portion of the judgment is clear that the shares of the individual sharers are declared.

At this stage, I am not going to express any opinion with regard to the nature of the decree in the suit for partition, but for the limited purpose of deciding this civil revision petition, the decree is treated as

preliminary decree and final allotment is to be made only by final decree.

Therefore, the observation of the learned V Additional District Judge in dismissal of the petition appears to be not legal. Hence, the order in I.A. No.577 of 2016 in A.S. No.17 of 2016 passed by the learned V Additional District Judge is liable to be set aside.

In the result, the civil revision petition is allowed granting stay of passing final decree in O.S. No.27 of 2005, by setting aside the order dated 11.11.2016 in I.A. No.577 of 2016 in A.S. No.17 of 2016 passed by the V Additional District Judge, Medak at Sangareddy, while permitting the Senior Civil Judge, Sangareddy, to go on further proceedings, if any, in pursuance of the preliminary decree, except passing final decree, subject to depositing of suit costs within four weeks. No costs

Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

M. SATYANARAYANA MURTHY, J

17.02.2017
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