

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

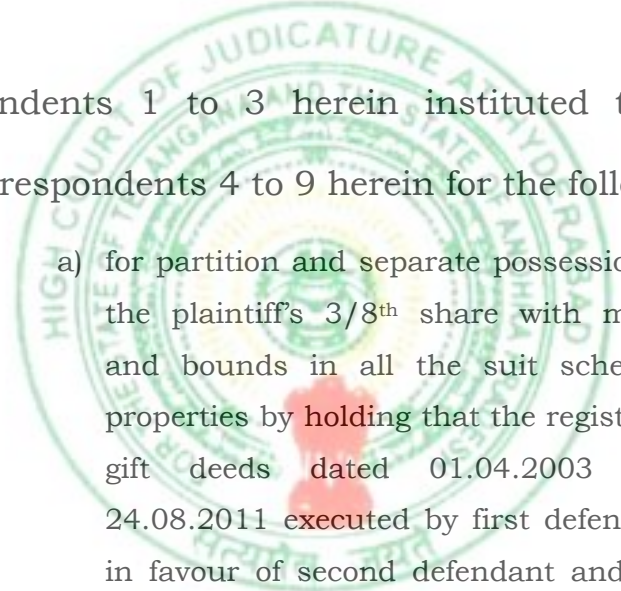
CIVIL REVISION PETITION No.5488 of 2017

ORDER:

Defendants 1 and 2 in O.S.No.246 of 2012 on the file of the II Additional Senior Civil Judge, Nandyal are the petitioners in the present revision, filed under Article 227 of the Constitution of India.

In the present revision, challenge is to the order, dated 13.09.2017, passed in I.A.No.800 of 2016.

Respondents 1 to 3 herein instituted the said suit against the respondents 4 to 9 herein for the following relief:

- 
- a) for partition and separate possession of the plaintiff's 3/8th share with metes and bounds in all the suit schedule properties by holding that the registered gift deeds dated 01.04.2003 and 24.08.2011 executed by first defendant in favour of second defendant and the registered sale deed dated 01.03.2012 executed by first defendant in favour of seventh defendant are not valid and not binding on the plaintiffs.
 - b) To award costs of the suit and
 - c) For such other relief and relieves as the Honourable Court deems fit and proper in the circumstances of the suit and in the interest of justice.

In the said suit, defendants 1 and 2 filed written statement, resisting the plaint pleadings on 14.12.2012. On 15.12.2016, defendants 1 and 2 filed the present I.A.No.800

of 2016, under Order VII Rule 11 (d) CPC, praying the Court to reject the plaint. Plaintiffs-respondents 1 to 3 herein filed a counter, resisting the said application. The learned II Additional Senior Civil Judge, by way of an order, dated 13.09.2017, dismissed I.A.No.800 of 2016. This revision challenges the validity and legal sustainability of the said order.

Heard Sri J.Janaki Rami Reddy, learned counsel for the petitioners-defendants, and Sri M.Ram Mohan, learned counsel for the respondents-plaintiffs, apart from perusing the material available before the Court.

It is contended by the learned counsel for the petitioners that the order impugned is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order VII Rule 11 CPC; that the impugned order is the result of total non-appreciation of the facts and circumstances of the case and the material available on record; that the plaintiffs are not the children of the first defendant, as such, they are not entitled to seek the relief of partition and that they did not file any piece of evidence to prove that the first defendant is their father; that even in the case of illegitimate children, they are not entitled to claim share in the plaint schedule property and that the plaintiffs are not the children of the first defendant and no document is filed and that the

suit for partition is barred by law as the plaintiffs are not the joint family members.

Per contra, totally supporting the impugned order, the learned counsel for the plaintiffs-respondents 1 to 3 contends that there is no error nor there exists any infirmity in the impugned order and, in the absence of the same, the impugned order does not warrant any interference of this Court under Article 227 of the Constitution of India; that various aspects are required to be decided after full-fledged trial and enquiry but not in an application, filed under Order VII Rule 11 (d) CPC.

In the above background, the issues that emerge for consideration of this Court are:

1. Whether the questioned order, rejecting the application filed by the petitioners herein, is in accordance with the provisions of Order VII Rule 11 (d) CPC?
2. Whether impugned order warrants any interference of this Court under Article 227 of the Constitution of India?

A perusal of the material available before this Court reveals that the plaintiffs claim to be the children of the first defendant and praying for partition of the plaint schedule properties and on the other hand, the defendants 1 and 2 deny their very paternity. As rightly found by the Court below, unless the issues are enquired into finally after full-fledged trial, the rights and status of the parties cannot be decided.

The Court below also recorded a finding that, to decide the issues which are mixed questions of law and facts, the Court must necessarily go into the merits of the case, only on taking the oral and documentary evidence into consideration, and it would not be possible to decide the same at the threshold. The Court below, in fact, by relying upon the judgments of this Court in **KASANI NARSIMULU v. SATHAGOWNI SRINIVAS GOUD AND OTHERS¹** and in **V.NARASIMHA REDDY AND OTHERS v. SARA ABDUL GAFOOR AND OTHERS²**, dismissed the application filed by the petitioners herein.

In the above referred judgments, this Court held that the power of the Court, under Order VII Rule 11 CPC, is required to be exercised with care, caution, circumspection and very sparingly and further held that, while dealing with the said provision, the Court has to take the pleadings in the plaint on their face value and the plaint cannot be rejected on the basis of the allegations made by the defendant in the written statement or the application for rejection of the plaint. The principles laid down in the above referred judgments are squarely applicable to the case on hand and, in the considered opinion of this Court, the Court below correctly rejected the application filed by the petitioners herein. Therefore, this Court has absolutely no scintilla of hesitation

¹ 2014 (2) ALD 149

² 2011 (5) ALD 381

nor any shadow of doubt to hold that the order impugned does not warrant any interference of this Court under Article 227 of the Constitution of India.

Accordingly, the Civil Revision Petition is dismissed. Miscellaneous petitions pending, if any, shall also stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

11th December, 2017

Tsy

