

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.5847 of 2017

ORDER:

This civil revision petition under Article 227 of the Constitution arises out of the order dated 23.08.2017 passed by the learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.300 of 2016 in O.S.No.945 of 2015. The said I.A. was filed by the petitioners/plaintiffs under Section 151 CPC seeking a direction to the defendants 2 and 4 to deposit Rs.21,000/-, being the aggregate rents collected by them from the tenants, before the trial Court during the pendency of the suit. By the order under revision, the trial Court dismissed the I.A.

Heard Sri C.Kumar, learned counsel for the petitioners/plaintiffs, and Sri S.Sainathan, learned counsel for respondents 2 and 4/defendants 2 and 4. Respondents 1 and 3/defendants 1 and 3 are shown as not necessary parties to this revision petition.

O.S.No.945 of 2015 was instituted by the petitioners/plaintiffs seeking partition of the suit schedule property and allotment of 1/6th share therein to each of them. They also sought appointment of an advocate commissioner for partitioning the suit property by metes and bounds and allotment of their shares in terms of the preliminary decree that may be passed in the suit and to grant them a final decree. Significantly, no prayer was made for any monetary relief, be it in terms of the past or future mesne profits or past or future damages. However, by way of the subject I.A., the petitioners/plaintiffs sought a direction to the defendants 2 and 4 to deposit the rents allegedly collected by them from the tenants.

The defendants 2 and 4 contested the subject I.A. claiming that the mother of the plaintiffs and defendants had died on 26.01.2013 and during her life time, she executed Will Deed dated 01.08.2011 bequeathing the suit schedule property to her son N.Damodar, the brother of the plaintiffs and the defendants.

The trial Court, while reproducing the respective stands of the parties, stated as under:

“There is no prima facie proof filed by the petitioners herein to establish that they got share in the suit schedule property. Even for argument sake if really the petitioners have got share in the suit schedule property, they can recover the amount if any they are entitled from the account of the property allotted to the share of the person who is collecting the rents. So, as the respondents herein claim that their brother is the exclusive owner of the suit schedule property as per the will executed by their mother and both the parties are relying on the oath to oath statement, the petitioners herein failed to establish prima facie that they have got share in the suit schedule property. As such, they are not entitled to direct the respondent No.2 for deposit of the rents and the petition is devoid of merits and liable to be dismissed. Accordingly, the point is answered against the petitioners.”

Sri C.Kumar, learned counsel for the petitioners/plaintiffs, would contend that the plaintiffs and the defendants do not have any brother at all. He would further state that the alleged Will Deed dated 01.08.2011 was not even produced before the trial Court.

Per contra, Sri S.Sainathan, learned counsel, would state that though the said Will Deed is not a registered one, it is very much available and would be placed on record during the suit proceedings.

The claim put forth by the defendants 2 and 4 in the suit to the effect that none of the sisters have any right in the property by virtue of

the Will Deed allegedly executed by their late mother requires to be examined by the trial Court during the adjudication of the suit. At this stage, even before the Will Deed is proved or disproved, the trial Court seems to have decided that the plaintiffs failed to establish that they have a share in the suit schedule property. In the event the alleged Will Deed dated 01.08.2011 is disbelieved, succession to the suit schedule property upon the death of the mother would be by way of intestate succession. If that is so, daughters cannot be excluded even if a brother is very much alive.

The finding of the trial Court in para 7 to the effect that the plaintiffs in the suit failed to establish that they have a share in the suit schedule property is accordingly excluded from the order under revision. The issue as to who would be entitled to succeed to the suit schedule property is left open to be addressed by the trial Court after due trial of all issues. However, given the fact that the prayer in the subject I.A. seems to be in excess of the suit prayer, this Court finds no grounds to interfere with the order under revision which is accordingly confirmed but for reasons other than stated in para 7 thereof.

Subject to the above observations, the civil revision petition is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

JUSTICE SANJAY KUMAR

29th December, 2017
PGS