

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1644 of 2012

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order in I.A.No.766 of 2011 in O.S.No.259 of 2006 passed by the Senior Civil Judge, Narasapur, whereby the trial Court partly allowed the application filed under Order 6 Rule 17 CPC.

Dissatisfied with the Order allowing the application partly the present petition is filed. The petitioner filed petition before the trial Court alleging that he filed suit for partition against his mother and brothers claiming 1/5th share and during pendency of the suit, due to death of his mother, the shares are changed and therefore, it necessitated the petitioner to file an application enabling the petitioner to claim 7/36th share instead of 1/5th share consequent upon the death of his mother, but the respondent set up a Will allegedly executed by his mother bequeathing the property in favour of the respondents. But, the validity and genuineness of the Will is to be enquired into and decide by the trial Court at appropriate stage and on that ground, the petition cannot be dismissed.

The trial Court only permitted the petitioner to amend the plaint to the extent of death of defendant No.3 i.e., mother of the petitioner. When mother if really died intestate, the Court is bound to mould the relief due to subsequent events and if for any reason, she executed a Will, the Court has to decide the validity and genuineness of the Will and decide the suit claim in accordance with law, but allowing application under Order 6 Rule 17 CPC in part while accepting defendant No.3 died during pendency of the suit is an *ex facie* erroneous and the order passed by the

trial Court is set aside while permitting the petitioner to amend the plaint as claimed in the petition and on filing neat copy of the plaint, the respondent is entitled to file rejoinder and in the event of rejoinder by the respondent, the Court below has to frame necessary issues and permit the parties to adduce additional evidence, if necessary.

With the above direction, this Civil Revision Petition is allowed.

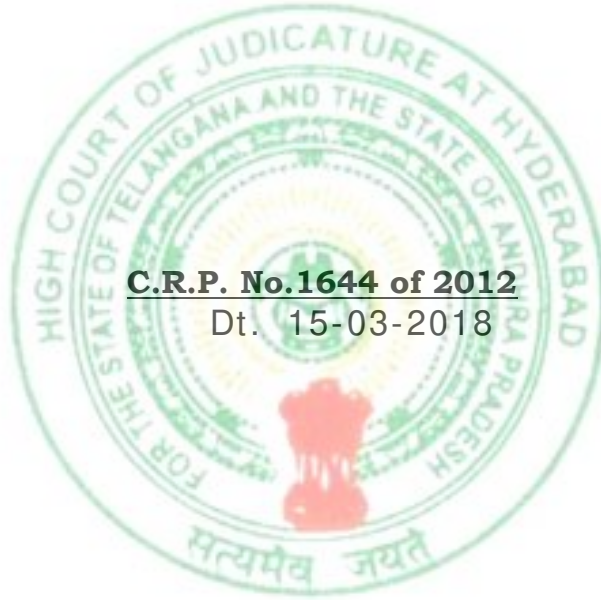
Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

Date: 15-03-2018
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M. SATYANARAYANA MURTHY, J



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