

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

C.R.P.No.832 of 2018

ORDER

Heard learned counsel for petitioners, learned counsel for respondents and perused the record.

2. The present revision is filed under Article 227 of the Constitution of India, assailing the order dated 12.07.2017 passed in C.M.A.No.19 of 2016 by the XII Additional District Judge, Pithapuram, confirming the order dated 25.10.2016 passed in I.A.No.536 of 2015 in O.S.No.138 of 2015 by the Principal Junior Civil Judge, Tuni, directing the appellants/defendants 1 and 2 not to meddle with the suit schedule property.

3. As seen from the record, the first and second respondents herein filed O.S.No.138 of 2015 for partition of plaint schedule property. During pendency of the suit, they filed I.A.No.536 of 2015 under Order 39 Rules 1 and 2 C.P.C., seeking temporary injunction restraining respondents 1 and 2 and their men from alienating the petition schedule property till disposal of the suit. After considering the disputed question, the trial Court vide order dated 25.10.2016 granted temporary injunction as sought for by the petitioners/plaintiffs. Assailing the same, the respondents/defendants 1 and 2 filed C.M.A.No.19 of 2016 and the same was dismissed by the appellate Court directing the appellants/defendants 1 and 2 not to meddle with the suit

schedule property. Challenging the same, the present CRP is filed.

4. The brief facts of the case are that the first plaintiff is the wife and second plaintiff is the daughter of deceased Nageswara Rao, who is the elder brother of defendants 1 and 2. The husband of first plaintiff and defendants 1 to 3 are brothers and that 4th defendant and the deceased Narla Sarojini, i.e., mother of defendants 5 to 7 are their sisters. All of them are children of Grandhi Venkata Ramana and Kameswaramma. It is not in dispute that the plaint schedule property is the self acquired property of Grandhi Kameswaramma, as she acquired the same by way of settlement deed dated 30.09.1982. It is stated that during her life time, Grandhi Kameswaramma had executed an unregistered will dated 13.08.2001 bequeathing the schedule property to her sons i.e., deceased Nageswara Rao and defendants 1 to 3. After the death of Nageswara Rao, his share in the property, devolved on the plaintiffs by succession. It is stated that after the death of Grandhi Kameswaramma on 26.12.2014, the plaint schedule property is said to have been divided and each of them were entitled to 1/6th share. It is pleaded that the plaintiffs got issued legal notices to defendants 1 and 2 and also sought for partition of the plaint schedule property into six equal shares by metes and bounds and to allot one such share to plaintiff. The record clearly indicates that the dispute between the parties, who are close relatives, relates to an ancestral property in which all of them are claiming share equally.

5. Learned counsel for the petitioners would submit that the petitioners/defendants 1 and 2 are in possession of the property and no restriction can be imposed upon them with regard to usage of the said property and no prejudice would be caused if it is used in the manner suggested by them.

6. Learned counsel for the respondents opposed the same.

7. Since the dispute is still at the initial stage, the question as to which portion of the plaint schedule property would fall to the share of petitioners or respondents has to be decided only after full-fledged trial and it is also too premature to say as to whether all the parties would get equal share or not. Therefore, permitting the petitioners to change the nature of land, cannot be accepted.

8. Having regard to the facts and circumstances stated above and taking into consideration the findings arrived at by both the Courts below, I am not inclined to grant the relief as sought for by the petitioners.

9. Accordingly, the Civil Revision Petition is dismissed, confirming the order under challenge. The trial Court shall dispose of the suit in O.S.No.138 of 2015 as expeditiously as possible. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

15th June, 2018

sj