

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4335 of 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, assailing the order dated 17.6.2016 passed in I.A. No.213 of 2015 in O.S.No.93 of 2015 on the file of the Court of V Additional District Judge (II.FTC), Warangal at Jangaon.

2. Heard the learned counsel for the petitioner-defendant No.4 in the suit.

3. The petitioner filed the petition under Order VII Rule 11 of CPC seeking to reject the plaint. The respondent Nos.1 and 2 filed counter *inter alia* contending that the averments made in the affidavit filed in support of the petition will not attract the provisions of Order VII Rule 11 of CPC; hence, the petition is liable to be dismissed. The trial Court, after affording reasonable opportunity to both the parties, dismissed the petition. Hence, the revision.

4. The point that arises for consideration in this revision petition is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

5. Respondent Nos.1, 2, 3 and 4 are wife, daughter, son and daughter of late Madashatty Kishan Rao. Respondent No.5 is the son of respondent No.3. A perusal of the record reveals that respondent Nos.1 and 2 filed O.S.No.93 of 2015 on the file of the Court of V Additional District Judge (II.FTC), Warangal at Jangaon, against respondent Nos.3 to 5 and the petitioner for partition of

properties belong to late Krishna Rao. The petitioner filed the petition under Order VII Rule 11 of CPC to reject the plaint on the ground that the plaintiffs have not paid the correct court fee.

6. It is needless to say that the Court has to consider the averments made in the plaint while deciding the petitions filed under Order VII Rule 11 of CPC. One of the contentions raised by the petitioner is that the respondent Nos.1 and 2 paid less court fee than payable on the plaint. To substantiate the argument, learned counsel for the petitioner has placed reliance on Clause (d) of Rule 11 of Order VII of CPC. It is a settled principle of law that all coparceners are deemed to be in constructive possession of ancestral property.

7. The claim of the petitioner is that he purchased certain portion of property from respondent No.5 under a registered sale deed. Whether the sale deed executed by respondent No.5 in favour of the petitioner is a valid one or not, has to be decided at the time of full-fledged trial. The petitioner is not the family member of respondent Nos.1 to 5. In a suit for partition, the plaintiff, who is in possession of ancestral property along with other co-parceners, can pay court fee in terms of sub-section (2) of Section 34 of A.P. Court Fee and Suits Valuation Act, 1956. The trial Court, in the impugned order, made an observation that the Court can frame an issue with regard to payment of court fee, if necessary. A perusal of the record *prima facie* reveals that respondent Nos.1 and 2 are in constructive possession of the plaint schedule property along with respondent Nos.3, 4 and 5. In such circumstances, payment of court fee under Section 34(2) of

the A.P. Court Fee and Suits Valuation Act is justifiable. Whether the suit schedule property is a joint family property or exclusive property of respondent No.5 is a question of fact, which has to be decided by the trial Court after full-fledged trial. The trial Court considered all these aspects in right perspective and dismissed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the impugned order to warrant interference of this Court, while exercising the jurisdiction under Article 227 of the Constitution.

8. In the result, the civil revision petition is dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

Date: 19.9.2018

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T.SUNIL CHOWDARY, J.

