

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.1042 of 2016

JUDGMENT:

This appeal is filed, under Section 100 CPC, assailing the judgment and decree dated 15.04.2016 passed in A.S.No.139 of 2014 on the file of XI Additional District Court, Tenali, Guntur District, wherein whereby the decree and judgment dated 01.09.2004 passed in O.S.No.196 of 1999 on the file of I Additional Junior Civil Judge Court, Tenali, decreeing the suit filed by the plaintiff for partition, was confirmed.

2. At the time of arguments, learned counsel appearing for both the parties submitted that the plaintiffs filed the suit for partition of the suit schedule property without impleading the other joint family members. Learned counsel for the appellant submitted that the trial Court has not framed the issue 'Whether defendant No.8 is the *bona fide* purchaser for a valuable consideration or not'. Learned counsel for the respondents also submitted that no issue was framed by the trial Court in that regard.

3. It is needless to say that in a suit for partition, all joint family members are necessary and proper parties. For one reason or the other, the plaintiffs did not choose to implead all the joint family members. If this Court passes any order in the absence of other family members, it may cause prejudice to them.

4. Learned counsel for the appellant submitted that this Court can remand the matter to the trial Court for framing appropriate issues and adjudicate the matter. To substantiate his argument,

he has drawn the attention of this Court to the decision in **Bachahan Devi V. Nagar Nigam, Gorakhpur**¹, wherein it was held that the Court can remand the matter if the facts of the case so warrants in view of Order 41 Rule 25 CPC.

5. Learned counsel for the respondents-plaintiffs submitted that the plaintiffs may be given an opportunity to implead the other joint family members. Learned counsel for the appellant submitted that the appellant-defendant No.8 have no objection to implead the other family members by the plaintiffs, if so advised.

6. In view of the submissions made by both the counsel, this Court is not inclined to go into the merits of the main case.

7. Having regard to the facts and circumstances of the case and also in view of the principle enunciated in the case cited supra, this Court is of a considered view that it is a fit case to remand the matter to the trial Court.

8. Accordingly, second appeal is allowed setting aside the decree and judgment in A.S.No.139 of 2014 dated 15.04.2016 on the file of the Court of the XI Additional District Court, Tenali, Guntur District. Consequently the judgment and decree dated 01.09.2004 passed in O.S.No.196 of 1999 on the file of I Additional Junior Civil Judge Court, Tenali is also set aside and matter is remanded to the trial Court. The trial Court is hereby directed to frame necessary issues to adjudicate the matter effectively so as to put an end to the litigation. The trial Court is further directed to consider the application filed by the plaintiffs to implead other joint family

¹ 2008(12)SCC 372

members. The trial Court is directed to dispose of the suit as expeditiously as possible, preferably, within a period of one year from the date of receipt of copy of this judgment. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

19.11.2018

Rns

