

HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

Civil Revision Petition No.3052 of 2015

ORDER:

This Civil Revision Petition is filed questioning the order dated 20.07.2015 in I.A.No.443 of 2013 in O.S.No.126 of 2013 on the file of the learned Family-cum-Additional District Judge, Ongole, Prakasam District.

2. The suit in O.S.No.126 of 2013 is filed for partition of the suit schedule property. The properties are described as items 1, 2 & 3 in the plaint schedule that is filed. In said suit for partition, I.A.No.443 of 2013 was filed for temporary injunction restraining the respondents 5 & 6 from issuing of any cheque to the respondents 1 & 2 till disposal of the application and also for temporary injunction restraining the respondents 5 & 6 from paying the amount till disposal of the suit. Said application was considered by the Court below and after hearing both the counsel the impugned order came to be passed, by which the Court directed payment of compensation by the respondents 5 & 6 to petitioner No.1 therein on some conditions. The same order is now impugned in the present Civil Revision Petition.

3. This Court has heard Sri I.Gopala Reddy, learned Senior Counsel appearing for Sri G.Sridhar and Sri V.R.Machavaram, learned counsel for respondent No.1.

4. Learned Senior Counsel appearing for the revision petitioners states that the order that is passed and impugned is far beyond the

scope of the suit itself. Learned Senior Counsel points out that the suit is filed for partition of three items of the property which are located in Survey No.388/1, Survey No.17 and Survey No.19/1 situated at Mukthinuthalapadu village. Learned Senior Counsel submits that the suit itself is filed for partition and in that suit the application in I.A.No.443 of 2013 is filed seeking an order of restraint under Order XXXIX Rule 1 CPC against the respondents 5 & 6 from disbursing the compensation amount pertaining to land in Survey No.77 admeasuring Ac.0.78 cents. Learned Senior Counsel points out that the land in Survey No.77 is not even the subject matter of the suit, the plaint schedule as the learned counsel does not deal with this item at all. In addition, the learned Senior Counsel points out that the application is filed only for grant of injunction restraining the respondents 5 & 6 from paying the amount, whereas the Court below in the impugned order directed the respondents 5 & 6 therein to actually pay the amount. Therefore, the learned Senior Counsel submits that the order granted is not even according to the prayer made in I.A. and it is also far beyond the scope of the suit. He therefore prays that the revision should be allowed.

5. In reply thereto, learned counsel for respondent No.1 submits that the respondents 5 & 6 have been added to the suit and as the issue of partition is to be decided the Court below did not commit any error in passing the impugned order. Learned counsel also states that the order is not absolute and directed the release of amount on the

condition that there should be security for the entire amount in the form of (a) personal security and (b) third-party security. The learned counsel submits that if the suit is decreed or dismissed, restitution is always available and that the same can be worked out depending on the final result of the suit. Therefore, the learned counsel submits that the money which is lying with the respondents 5 & 6 can be utilised by the petitioners. He therefore states that there is no error in the impugned order.

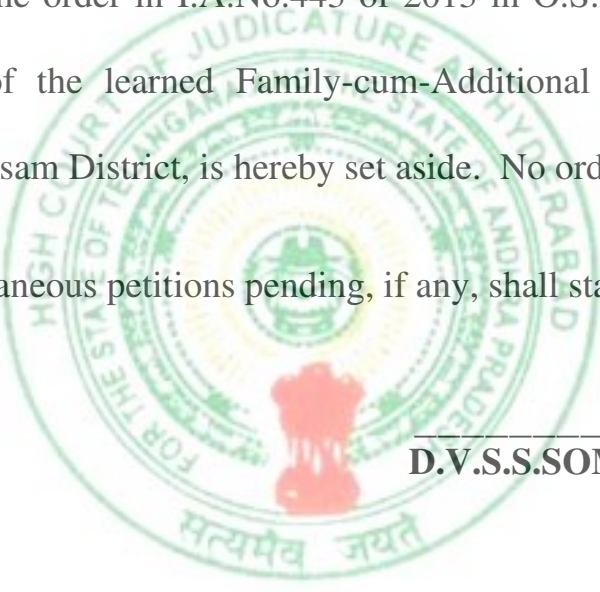
6. This Court, after hearing both the counsel, notices that there is strength in the submissions made by the learned Senior Counsel. The suit is filed for partition and the scope of enquiry in a suit for partition is to determine whether the plaintiffs and defendants have rights in the property and if the same is to be partitioned. The enquiry will only will be confined to the items described in the plaint schedule. The interlocutory application that is made relates to payment of compensation amount in respect of Survey No.77 which is not even mentioned in the plaint schedule. Any order granted in an interlocutory application can only be for the purpose of and in furtherance of the main relief that is sought in the suit. It cannot be beyond the main relief that is sought. In this case Survey No.77, for which the compensation amount has been awarded is not the subject matter of the suit. Therefore, the lower Court committed an error in considering the application. To compound this, the lower Court also ignored the prayer that is made by the petitioners. The prayer is only

to restrain the respondents 5 & 6 by way of interim injunction from disbursing or paying the amount. Instead of granting or refusing the said prayer (assuming that the same is maintainable) the Court granted the relief which is not even prayed by the petitioners. A huge amount has been ordered to be paid ignoring the scope of the suit. For all these reasons, this Court is of the opinion that the impugned order is bad in law. This revision petition is therefore allowed.

7. Accordingly and in the result, this Civil Revision Petition is allowed and the order in I.A.No.443 of 2013 in O.S.No.126 of 2013 on the file of the learned Family-cum-Additional District Judge, Ongole, Prakasam District, is hereby set aside. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

14.12.2018
MVA


D.V.S.S.SOMAYAJULU, J