

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.826 OF 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the order, dated 25.01.2017, passed in I.A.No.13 of 2017 in O.S.No.155 of 2015 on the file of the Court of the Senior Civil Judge, Pithapuram.

2. Heard and perused the material on record.

3. The petitioner filed O.S.No.155 of 2015 on the file of the Court of the Senior Civil Judge, Pithapuram, against the respondents for partition of 'A' and 'B' suit schedule properties into five equal shares by metes and bounds and for allotment and delivery of possession of one such share to him and for other reliefs. The 3rd respondent - 3rd defendant filed a written statement stating that one Madduri Atchayamma executed an unregistered Will, dated 01.12.2014, in his favour bequeathing the suit schedule properties. The trial Court framed the following issues:

“1) Whether the plaintiff is entitled for partition of plaint schedule properties?

2) Whether the plaintiff is entitled for recovery of arrears of maktha as prayed for?

3) Whether the plaintiff is entitled for future profits as prayed for?

4) To what relief?”

4. The petitioner filed a petition under Order XIV Rule 5 and Section 151 C.P.C. for framing of additional issue to resolve the *lis* involved in the suit. The 3rd respondent filed a counter *inter alia* contending that the petition is not maintainable. The trial Court, after affording reasonable opportunity to both the parties, dismissed the petition. Hence, the revision.

5. All the parties are interrelated to each other. As observed earlier, the 3rd respondent is claiming the suit schedule properties basing on the unregistered Will, dated 01.12.2014. In order to adjudicate the suit effectively, the trial Court ought to have framed an issue with regard to the Will, dated 01.12.2014. The trial Court under the misconception arrived at a conclusion that allowing of the present petition amounts to *res judicata*. It is not the case of both the parties that the principle of *res judicata* applies in this case. Even if the additional issue is framed, the same may not affect the rights of respondents, more particularly the 3rd respondent. In the absence of framing of such an issue, the Court may not be in a position to adjudicate the matter effectively in order to put an end to the litigation once for all.

6. Having regard to the facts and circumstances of the case, this Court is of the view that it is a fit case to allow the revision.

7. In the result, the Civil Revision Petition is allowed setting aside the order, dated 25.01.2017, passed in I.A.No.13 of 2017 in O.S.No.155 of 2015 on the file of the Court of the Senior Civil Judge, Pithapuram. Consequently, I.A.No.13 of 2017 is allowed. The trial Court is hereby directed to frame the additional issue and proceed in accordance with law.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T. SUNIL CHOWDARY, J

17th December, 2018
MD