

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.M.A.No.964 of 2006

JUDGMENT:

This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(c) CPC assailing the order dated 19.09.2006 passed in I.A.No.332 of 2005 in O.S.No.21 of 2003 on the file of the Court of Senior Civil Judge, Rajampet.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the appellant filed O.S.No.21 of 2003 on the file of the Court of Senior Civil Judge, Rajampet against the respondents for partition of the suit schedule property. The appellant and respondents are own sisters and brother. On 22.07.2005, the appellant did not appear before the trial Court. Hence, the suit was dismissed for default. The appellant filed the petition to restore the suit. The trial Court dismissed the petition. Hence, the revision.

4. A perusal of the record reveals that on 22.07.2005, the appellant could not appear before the trial Court as she is residing at Tirupathi. A perusal of the record further reveals that the counsel engaged by the appellant was died during pendency of the suit. The factum of death of the appellant's counsel is not in dispute. For one reason or other, the appellant could not attend the Court. If the appeal is dismissed, it may not be possible for the appellant to ventilate

her legitimate and legal grievances. If the appeal is allowed without imposing any condition, the possibility of dragging on the matter by the appellant cannot be ruled out completely.

5. Taking into consideration the facts and circumstances of the case, this Court is of a considered view that it is a fit case to allow the appeal by imposing some conditions.

6. In the result, the Civil Miscellaneous Appeal is allowed setting aside the order dated 19.09.2006 passed in I.A.No.332 of 2005 in O.S.No.21 of 2003 on the file of the Court of Senior Civil Judge, Rajampet. Consequently, I.A.No.332 of 2005 is allowed restoring the suit on a condition of appellant paying an amount of Rs.5,000/- (Rupees five thousand only) to the respondents. The trial Court is hereby directed to dispose of the matter within six (6) months from the date of receipt of copy of this order. The trial Court is at liberty to dispose of the matter in accordance with law, if the appellant fails to cooperate with the Court. As a sequel, Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

23rd July 2018,
Rns

T.SUNIL CHOWDARY, J

