

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1024_2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt. 06.02.2015 in I.A.No.10/2013 in I.A.No.61/2010 in O.S.No.1210/2001 passed by XI Additional Senior Civil Judge (FTC), City Civil Court, Hyderabad., dismissing the application filed under Order 1 Rule 10 (2) CPC to implead the petitioners as respondents in the final decree petition i.e., I.A.No.61 of 2010 in O.S.No.1210 of 2001.

It is the case of the petitioners that respondent No.1/plaintiff filed a suit for partition and separate possession of plaint 'AB' and 'C' schedule property and the petitioners have no knowledge about the pending proceedings and appeals over the suit schedule property and the suit was decreed as well as first appeal preferred by the respondents/defendant Nos. 1 to 3 were also dismissed. It is further contended that petitioner No.1/3rd party and respondent No.1/Plaintiff have filed the final decree petition and as per her admission, the plaint schedule property is ancestral property and it constitute a joint Hindu family or joint ownership and that the petitioners are also entitled to claim 1/6th share in the schedule property and therefore, the petitioners are proper and necessary parties to the suit for complete and effective adjudication of the claim and prayed to permit them to come on record as respondents in the final decree petition.

The respondents filed Counter affidavit denying the material allegations, *interlia*, contending that the trial Court already recorded specific finding in the second appeal that the persons from whom the petitioners are claiming right, have no right in the schedule property

and, therefore, the petitioners are not entitled to implead them as respondents and prayed for dismissal of the petition. The trial Court dismissed the petition basing on the findings recorded in the 2nd Appeal, accepting the respondents' contentions.

Aggrieved by the Order of the trial Court, the present Civil Revision Petition is filed on various grounds, mainly contending that the decree and judgment was passed without impleading them and they are entitled to claim right in view of Section 29 (A) of Hindu Succession Act (AP Amendment) and also by amendment to Section 6 of Hindu Succession Act as amended by Act 39 of 2005 and therefore, they are entitled to come on record to claim 1/6th share in the suit schedule property.

During hearing, learned counsel for the petitioners, reiterated the said contentions and while contending that the Order under challenge is erroneous and the trial Court did not look into AP Amendment to Hindu Succession Act by incorporating Section 29(A) and Central Amendment to Section 6 of Hindu Succession Act by Act 39 of 2005, those amendments are applicable to the case of the petitioners and they are entitled to claim share in the schedule property and finally requested this Court to permit them to be impleaded as respondents and set aside the Order under challenge.

Whereas, the learned counsel for the respondent supported the Order in all respects while drawing the attention of this Court to the Judgement in S.A.No.960 of 2011 and the findings recorded by this Court in para No.6 of the Judgment and requested this Court to dismiss the present petition.

As seen from the allegations made in the affidavit, they are claiming 1/6th share in the property through their father and they are

entitled to claim benefits under Section 29 (A) of (AP Amendment) and so also under Section 6 of Hindu Succession Act by amended Act 39 of 2005. In fact, while deciding the suit, the trial Court and first appellate Court did not accept the contention raised by the father of these petitioners and in the second appeal, specific findings were recorded in para No.6, which is extracted hereunder:

“ It is sought to be contended by the appellants' counsel as a substantial question of law that there are no two sisters for the defendants 2 and 3 who are daughters of the 1st defendant and that they are also entitled to their shares in the family properties under Section 29-A of the Hindu Succession Act, 1956 as amended in the State of Andhra Pradesh and which came into force in the year, 1986. There is no plea in the pleadings of the defendants on this aspect. There is also no evidence let in, in support of the said contention by both the parties. Either in the trial Court or in the lower Appellate Court, this point was urged. It is contended that it can be urged at any time as this is only a pure question of law. This is not a pure question of law. It is a mixed question of law and fact. Without there being facts before the Court, this Court cannot permit the appellants to raise a legal question which is based on no evidence. For application of Section 29-A of the Hindu Succession Act, 1956, several pre-conditions are to be satisfied by the female sharers i.e., daughters to claim shares in the joint family properties. It is not known whether there are any sisters for the defendants 2 and 3 and if so whether their marriages were before or after commencement of Section 29-A of the said Act. In the absence of the said material before the Court, the said question becomes no question of law at all. “

When this Court in the Second Appeal rejected the plea raised by the father of these petitioners/defendant No.1 in the said suit regarding their entitlement to claim share in the property by virtue of Section 29-A (AP Amendment Act to Hindu Succession Act) or by virtue of Section 6 of Hindu Succession Act (by Central Act 39 of 2005) this Court declined to interfere with the findings recorded by trial Court and first appellate Court in S.A.No.960 of 2011. When such plea was negated by this Court in the suit itself, the petitioners cannot be permitted to come on record taking advantage of Section 29 (A) of Hindu Succession Act (AP Amendment) because it is subject to proof of certain requirements under Section 29(A). When the petitioners are claiming benefit under Section 29(A) of Succession Act (AP Amendment), they are disentitled to claim benefit under Section 6 of Hindu Succession Act, which came into effect in the year 2005. The

Entitlement to claim benefit under Section 6 of Amendment Act is hedged by certain conditions. However, Apex Court in *Prakash and others v Phulavathi and Others*¹, made it clear that the daughters are entitled to claim benefit under Section 6 of Hindu Succession Act only when succession opens after the commencement of the Act and in view of the law declared by the Apex Court in Prakash's case referred above, the petitioners are not entitled to claim any share impleading as respondents when they are specially claiming right under Section 29 (A) of Hindu Succession Act (AP Amendment), which was negated by this Court in the second appeal. Therefore, the petitioners are neither proper nor necessary parties to the interlocutory application i.e., the petition filed for passing final decree in I.A.No. 61 of 2010. Since this Court had already recorded a finding in the second appeal that in the absence of any plea, defendant No.1/father of these petitioners, is disentitled to question the judgment passed by the first appellate Court and therefore, I find no ground to set aside the Order passed by the trial Court, since, the order passed by the trial Court is free from any infirmity warranting interference of this Court by exercising power under Article 227 of the Constitution of India. Consequently, this Civil Revision Petition is liable to be dismissed as it devoid of merits.

Accordingly, this Civil Revision Petition is dismissed.

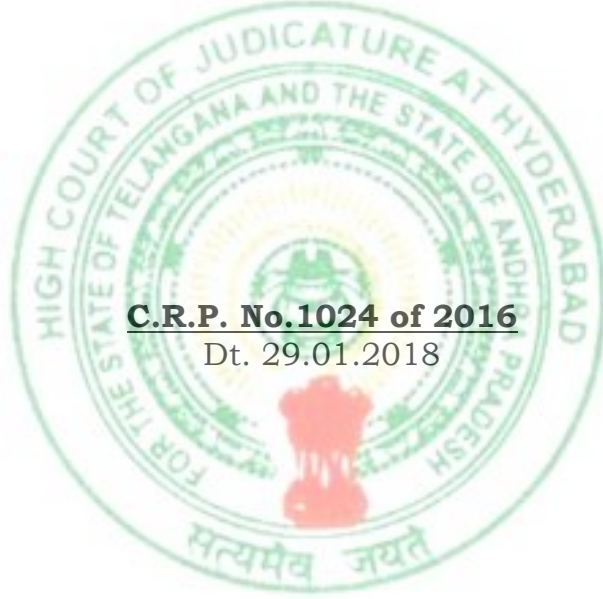
As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 29-01-2018
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¹ AIR 2016 Supreme Court 769

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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