

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4036 OF 2011

ORDER:

This civil revision petition is filed under Article 227 of Constitution of India challenging the order dated 29.08.2011 passed in I.A.No.782 of 2011 in O.S.No.71 of 1999 by the V Additional District Judge (Fast Track Court) East Godavari, Rajahmundry, whereby, the petition filed under Order XII Rule 6 read with 151 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The petitioner filed the petition under Order XII Rule 6 of C.P.C. to pass an interim preliminary decree taking advantage of the admission made in the written statement filed by defendant No.5 reporting no objection for partition of item No.1 of 'A' schedule property while claiming item No.2 of 'A' schedule property is exclusive property of defendant No.5.

The respondent filed counter denying material allegations *inter alia* contending that the petitioner has to prove his case independently and the petitioner filed the present petition with a view to protract the proceedings for some more time, therefore, sought for dismissal of the petition.

The trial Court dismissed the petition holding that the petitioner has no right to seek preliminary decree and he wantonly filed the petition after lapse of 12 years.

Aggrieved by the order, the present revision is filed contending that the trial Court did not consider the unequivocal admission made by defendant No.5 in the written statement reporting no objection for partition of properties belonging to Krishnarao, husband of defendant No.5 and she made a clear admission that item No.1 of 'A' schedule property belonging to Krishnarao while asserting that she is the absolute owner of item No.2 of 'A' schedule property, but the Court below did not consider the same in proper perspective and committed an error in dismissing the petition and prayed to set aside the same.

During hearing, learned counsel for the petitioner would draw the attention of this court to the admission made by defendant No.5 in her written statement in paragraph No.5. Defendant No.5 made unequivocal admission reporting no objection for passing preliminary decree in respect of the property belongs to Krishnarao and admitted that item No.1 of 'A' schedule property belongs Krishna Rao.

Learned counsel for the petitioner further drawn the attention of this Court to the observation made in Tr.C.M.P.No.26 of 2008, where the Court observed that the "learned counsel for the respondents submits that his clients express their willingness for a preliminary decree for the properties, except one item, and it is only adamant attitude of the petitioner that is resulting in delay of the disposal of the suit." Based on this observation he contended that it can be treated as additional admission.

Learned counsel for the respondents supported the order passed by the Court in all respects while contending that there are number of properties described in the suit schedule and the defendant No.5 admitted that only item No.1 of 'A' schedule belongs to Krishna Rao, which is an extent of 100 sq. yards and the petitioner is claiming 1/6th share, which is less than 20 sq.yards.

Plaint schedule property consists of 'A' to 'K' schedules, which is inclusive of both movable and immovable properties, item No.1 of 'A' schedule is a site of an extent of 100 sq.yards together with the building bearing D.No.8-2-1/4 within the specified boundaries and the other items are '4' in number and it is contended that item No.2 of 'A' schedule is exclusive property of defendant No.5. Plaint 'B' schedule consists of 57 items of gold items worth Rs.7,71,050/- and the share of this petitioner is Rs.1,49,050/-. Similarly, other schedules consist of various items. Petitioner herein prayed for passing a preliminary decree for only one item i.e. item No.1 of 'A' schedule basing on the admission.

In total 28 persons are arrayed as defendants, but only defendant Nos.1 to 5 are contesting the suit and the written statement filed by defendant No.5 alone is placed on record to support the contention of the petitioner that she made an admission and it is not known whether other contesting defendants i.e. defendant Nos.1 to 4 filed any written statement individually or adopted the written statement filed by the defendant No.5, though counsel contended that they adopted the written statement filed by defendant No.5, but the memo adopting

the written statement filed by defendant No.5 is not placed on record to accept this contention.

As it is, the written statement filed by defendant No.5, she admitted that she has no objection to partition the property stood in the name of Krishnarao and she specifically claimed that item No.2 of 'A' schedule property is her exclusive property and raised several other contentions.

Unequivocal admission made by defendant No.5 is only in respect of item No.1 of 'A' schedule property, but the other contesting defendants admitted such fact or not is a question and in the absence of any material to establish that they adopted the written statement filed by the defendant No.5 or not and in the absence of admission made by other contesting defendants, who are contesting the suit, based on admission made by defendant No.5 pertaining to item No.1 of 'A' schedule property alone, a judgment on admission cannot be passed. If the suit is being contested by only one defendant, there is some justification in passing judgment on admission by exercising power under Order XII Rule 6 of C.P.c.

Observations made in Tr.C.M.P.No.26 of 2008 is not an admission made by the defendants either in pleadings or otherwise. It is only an observation of the Court, it does not bind the parties. Therefore, there is absolutely no material to establish that the defendant Nos.1 to 4 made admission that they have no objection for partition of the suit schedule property.

Even if the admission made by defendant No.5 is accepted as it is, item No.1 of 'A' schedule alone is the property belonging to Krishnarao and the claim against the other properties required to

be adjudicated at the end of trial. Therefore, based on admission made by one of the defendants, the Court cannot pass judgment on admission by exercising power under Order XII Rule 6 of C.P.C. Consequently, the revision is liable to be dismissed. However, it is open to the petitioner to raise such contention if the other contesting defendants filed memo adopting the written statement filed by defendant No.5 during trial.

In the result, the civil revision petition is dismissed. The trial Court is directed to dispose of the main suit within six (6) months from the date of receipt of a copy of this Order. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

06.03.2018
Ksp

JUSTICE M. SATYANARAYANA MURTHY

