

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.6388 of 2017

ORDER:

The challenge in this Civil Revision Petition at the instance of the defendants is the order dated 20.10.2017 in I.A.No.77 of 2016 in O.S.No.76 of 2015 passed by the VII Additional District Judge, Mahabubnagar, allowing the application filed under Section 151 C.P.C, by the plaintiffs and directing the defendants 1 to 3 to deposit Rs.26,46,365/- towards 7/24th share of plaintiffs in the compensation amount.

2) O.S.No.76/2015 is a suit for partition filed by the plaintiffs seeking 7/24th share in suit schedule properties comprising Ac.31-00gts of land and a residential house. Plaintiffs' case is that one Mohd. Moulana Sab had two wives i.e, Kareemunnisa Begum and Safiya Begum (D.1). He died intestate in the year 2001. Through first wife—Kareemunnisa Begum, he got two daughters, Azeemunnisa Begum (died) and Anwarunnisa Begum (plaintiff No.1). Plaintiffs 2 to 5 are the children of Azeemunnisa Begum, who died on 09.04.2016. Thus plaintiffs are the daughter and grandchildren of late Mohd. Moulana Sab. Through second wife—Safiya Begum, he begot two sons, who are defendants 2 and 3. Safiya Begum is the first defendant. The defendants though admitted the relationship, opposed the suit.

3) While-so, the plaintiffs filed I.A.No.77/2016 contending that before filing suit, Government initiated proceedings for acquisition of plaintiff schedule lands and issued cheque for Rs.90,73,250/- in the names of defendants 1 to 3 and since petitioners are daughter and grandchildren of

late Mohd. Moulana Sab through 1st wife, they too have a share in the compensation. Hence, they sought for a direction to deposit the cheque amount to safeguard the interest of both parties. The respondents opposed the petition contending that the plaintiffs have filed suit for partition of the lands knowing fully well that lands are not available for partition. They have not filed any application under Section 30 of Land Acquisition Act, to refer the matter to civil court and therefore, they have no right to seek deposit of cheque amount. The Trial Court observed that admittedly, the Government acquired 31 Acres of the lands, shown in Item No.1 of the plaint schedule, which belonged to late Mohd. Moulana Sab and defendants did not dispute the relationship of the plaintiffs with Moulana Sab. The defendants claimed exclusive right over the house property by virtue of the oral gift, which was later allegedly reduced into writing under a Memorandum and in the said Memorandum, the land acquired by the Government was not bequeathed by Moulana Sab to anyone and he died intestate, which was evident from the said Memorandum. The Trial Court further observed since the plaintiffs are progeny of late Moulana Sab, they are entitled to a share in compensation amount paid by the Government and as the entire amount was taken away by the defendants, they are liable to deposit 7/24th share of the plaintiffs into Court and accordingly, directed the defendants to deposit Rs.26,46,365/-.

Hence the CRP.

4) Heard both sides.

5) At the outset, I do not find any illegality or perversity in the order impugned. In view of the admitted facts that the plaintiffs are the daughter and grand children of late Moulana Sab and as he died intestate and the landed property covered by item No.1 of the plaint schedule was acquired and entire compensation was paid by the authorities to the defendants, the plaintiffs *prima facie* have a legitimate share therein. Hence, the Trial Court rightly directed the defendants to deposit proportionate value of the compensation amount into Court. The contention of the defendants that since the plaintiffs did not apply for their impleadment in the land acquisition proceedings, they cannot now seek to direct the defendants to deposit their share of amount is unsustainable. The other contention that the plaintiffs have to file a separate suit for realization of their share of the amount, also does not hold water since the plaintiffs have filed a comprehensive suit for partition to decide their rights in the family properties. Consequently, the decisions cited by them will have no application.

6) In the result, this C.R.P is dismissed and the petitioners herein/ defendants are directed to deposit the amount of Rs.26,46,365/- within two(2) months from the date of this order, failing which, the Trial Court shall forfeit their right to contest the suit. No costs.

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

U. DURGA PRASAD RAO, J

Date: 11.06.2018

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