

THE HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CCCA No. 226 OF 2017

Judgment:

This CCCA is filed against the judgment and decree dated 03.08.2017 passed in O.S.No.248 of 2006 by the learned X Additional Chief Judge, City Civil Court, Hyderabad.

2. The said suit was filed for partition and separate possession of the suit schedule property and for grant of perpetual injunction restraining the defendants from creating a charge or dealing with the property in any manner. The property in question in the suit is a site admeasuring 558 sq. yards along with building bearing Door No.16-7-784, situated at Chadargath, Azampura, Hyderabad. The claim of the plaintiffs in the suit is that they are the children of one late Quddus Ahmed and his first wife. Defendants 5 and 7 are the sons of Quddus Ahmed and the first wife. Defendant No.1 is the second wife of late Quddus Ahmed and defendants 2 to 4 are the children of late Quddus Ahmed and defendant No.1. The suit is filed for partition of the property.

3. Before the trial Court, PW.1 was examined and Exs.A1 to A6 were marked on behalf of the plaintiffs. No oral or documentary evidence was adduced on behalf of the defendants.

4. During the course of trial, it came out that apart from the suit schedule property there is another property bearing Door No.16-7-783 belonging to late Quddus Ahmed. Therefore, the lower Court on

appreciation of evidence came to the conclusion in Issue No.1 that the suit for partial partition is not maintainable and, accordingly, dismissed the suit vide its impugned judgment and decree.

5. In the course of CCCA which was filed to set aside the said judgment and decree, a counter affidavit along with material papers was filed by the contesting respondents, wherein they have pleaded in paragraph 12 that another suit in O.S.No.349 of 2006 was filed for partition of the very same property in which the appellants herein are also parties. Initially, the said suit in O.S.No.349 of 2006 was dismissed and later the same was restored to file by virtue of the orders of this Court dated 18.06.2013 passed in C.R.P.No.6030 of 2010. According to the averments of the counter affidavit, the suit in O.S.No.349 of 2006 is stayed. Learned counsel for the respondents submits that the stay was obtained by them under Section 10 of the Civil Procedure Code in view of the pendency of both the suits.

6. In view of the fact that O.S.No.248 of 2006 has been dismissed, it is for the lower Court to decide on the said application.

7. Coming to the averments made in the present CCCA, learned counsel for the appellants urged that the matter should be remanded to the lower Court to be tried along with the said O.S.No.349 of 2006. This Court is of the opinion that remand cannot be ordered in the facts and circumstances of the case, as the observation of the lower Court that a suit for partial partition is not maintainable is correct and as per law. In

the circumstances, this Court finds that there are no merits in the present CCCA and the same is liable to be dismissed.

8. The CCCA is, accordingly, dismissed. There shall be no order as to costs. However, as the suit in O.S.No.349 of 2006 is pending and the appellants herein are also parties to the said suit, they are at liberty to set out their defences in the said suit since the said suit is also for partition of the very same property.

9. As a sequel thereto, the miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 04.06.2018
Nsr



D.V.S.S. SOMAYAJULU, J.

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