

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. No. 1087 of 2018

ORDER:

This Revision is filed challenging the order dt.14.12.2017 in I.A.No.1133 of 2015 in O.S.No.218 of 2014 of the XII Additional Chief Judge, City Civil Court, Secunderabad.

2. Petitioners herein are defendants 2 and 3 in the above suit.

3. The 1st respondent herein filed the said suit against the petitioners and other respondents for partition and separate possession of 1/12th share in suit schedule-1 property and 1/6th share in suit schedule 2 & 3 properties.

4. It was alleged by the 1st respondent/plaintiff that the suit schedule properties were purchased in the name of the 1st defendant/2nd respondent, who is his father and father of petitioners; that the 1st petitioner/2nd defendant is acting against his interest and had denied the legal claim of the 1st respondent and so he filed the suit for partition.

5. Written Statement was filed by the 2nd respondent/1st defendant opposing the suit claim. The allegations made by the 1st respondent that the 2nd respondent along with his four

brothers jointly conducted the business of cloth and purchased the suit schedule properties out of the said income, is denied. The 2nd respondent/1st defendant however admitted that he along with four brothers purchased suit schedule-1 property, but not out of the income from the cloth business. He stated that in 1987 there were arbitration proceedings with regard to partition of schedule-1 property between himself and his four brothers; that there was an award passed on 02.11.1987 and it was also made as the Rule of Court in O.S.No.1611 of 1988 by the III Additional Judge, Secunderabad and in terms of the award, a decree was passed for partition. He stated that in terms of the said decree, he along with 6th defendant/5th respondent was allotted the doubled storied building located in Item No.1 to the part of the land admeasuring 543.76 sq. yards. He stated that ground floor of building was allotted to himself and 1st floor was allotted to 6th defendant; thereafter 2nd respondent/1st defendant had constructed 2nd floor; and 6th defendant constructed 3rd floor over the said double storied building. As regards schedule 2 and 3 properties, he stated that they stand in his name and he had purchased the properties himself and they are not purchased with the funds derived from the joint family nucleus of the 1st respondent, petitioners, 2nd respondent and respondents 3 to 5. He

stated that these properties were purchased by him out of the income generated from his own business and neither the 1st respondent nor his other sons have any right therein.

6. Along with the suit, 1st respondent had filed I.A.No.1133 of 2015 under Section 151 of CPC to direct the petitioners herein to deposit monthly rent @ Rs.1,92,934/- per month from January, 2015 to the credit of the suit.

7. The said I.A., was initially allowed on 03.07.2017, but this Court in CRP.No.4017 of 2017 remanded the matter back for fresh consideration since it found that the Court below did not properly consider the pleadings and contentions.

8. Thereafter, the impugned order was passed by the Court below on 14.12.2017 allowing I.A.No.113 of 2015.

9. Though the 1st defendant died during the pendency of I.A.No.1133 of 2015, it is the contention of the petitioners that during his life time he executed 3 Gift Deeds, Exs.R1 to R4, in favour of the petitioners.

10. In the impugned order, the Court below noted that there is no evidence placed on record by the 1st respondent/ plaintiff to show that the schedule properties were leased out

to M/s Vijaya Diagnostic Centre Pvt. Ltd., and rent to a tune of Rs.1,92,934/- per month were being paid by the said tenant; that the petitioners denied the claim of the 1st respondent; and it held that there is no acceptable material to accept the contention of the 1st respondent that petitioners were collecting rents from the alleged tenant.

It also noted that the petitioners had filed certified copy of a Lease Deed Ex.R5 dt.27.07.2016 which showed that the property in dispute was leased out by Yerram Sravan Kumar and Yerram Radhika to M/s Himalaya Book World on a monthly rent of Rs.1,75,000/- with effect from 01.12.2016 for a period of 15 years i.e. up to 30.11.2031. It held that since the 1st respondent filed Exs.P1 to P5 showing that there was joint family business and the property in dispute is a joint family property where he is claiming a share, no prejudice would be caused to the petitioners even though they are directed to deposit 1/6th share of the 1st respondent in the monthly rent of Rs.1,75,000/- into the Court till disposal of the suit.

11. Assailing the same this Revision is filed.

12. Counsel for the petitioners contended that earlier the 2nd respondent/1st defendant and his wife-Rajamani, had filed O.S.No.11 of 2005 against the 1st respondent for

Perpetual Injunction when the 1st respondent was harassing them to give him their properties and in that suit they mentioned about 8 items which were given to the 1st respondent; in the Written Statement filed by the 1st respondent in the said suit, he categorically stated that those properties only were given to him by the 2nd respondent and his wife; and that he had already sold them to clear his debts and he did not have right or claim of whatsoever nature over the left over properties of his parents as well as his brothers.

13. Pleadings in this suit were in fact marked as Ex.R1 in I.A.No.1133 of 2015.

14. Though there is a reference in para 17 of the impugned order to the plaint and written statement in O.S.No.11 of 2015, the same is neither considered nor discussed by the Court below.

15. Counsel for the petitioners contends that in the light of the said admission made by the 1st respondent in O.S.No.11 of 2005 in his Written Statement filed before the I Junior Civil Judge, City Civil Court, Hyderabad, he cannot now turn around and say he has a share in the properties of the 2nd respondent and his wife, particularly, when during the life time of the 2nd respondent, he had executed Exs.R2 to R4

Registered Gift Deeds and a Will Ex.R6 and did not give any property to the 1st respondent.

16. Counsel for the 1st respondent did not dispute the statement made in the Written Statement filed by the 1st respondent in O.S.No.11 of 2005 and did not state as to how the 1st respondent can again contend that he has a share in the suit schedule properties.

17. In my considered opinion, the statement in para 5 of the Written Statement in O.S.No.11 of 2005, wherein the 1st respondent had stated that he did not have any right or claim of whatsoever nature over the properties of the 2nd respondent and his wife as well as the petitioners and that only Items 1 to 8 mentioned in para 7 of the plaint in O.S.No.11 of 2005 were his share of properties, estops the 1st respondent from claiming any right over the suit schedule properties, *prima facie*.

18. Unfortunately, the Court below committed a grave error in totally ignoring Ex.R1 and passing the impugned order.

19. Therefore, this Civil Revision Petition is allowed; the order dt.14.12.2017 in I.A.No.1133 of 2015 in O.S.No.218 of 2014 of the XII Additional Chief Judge, City Civil Court, Secunderabad, is set aside and the said I.A. is dismissed.

The Court below shall decide the suit O.S.No.218 of 2014 uninfluenced by any observations made by this Court in this order or in the impugned order passed by it. No order as to costs.

20. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

18th March, 2019.

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