

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.412 of 2019

ORDER :

This Civil Revision Petition is filed challenging the order dt.07.02.2019 passed in I.A.No.168 of 2016 in O.S.No.32 of 2007 on the file of the Senior Civil Judge, at Adilabad.

2. The petitioner herein is defendant no.5 in the above suit.
3. The said suit was filed by 1st respondent for partition and separate possession of her half share in the suit schedule property which belonged to her mother, viz., Smt. Palakonda Devamma.
4. The said suit was contested by petitioner stating that the plaintiff had converted to Islam and called herself Khatija Begum, and she is not a legal heir of Smt. Palakonda Devamma.
5. After contest, the suit was decreed.
6. The said judgment was also confirmed in Appeal Suit No.26 of 2013 by the District Judge, Adilabad.
7. It is stated that a Second Appeal (S.R.) was filed challenging S.A.No.440 of 2018 against the said judgment and the second appeal was filed with a delay of (628) days which was condoned on 07.09.2018, and is to be posted for admission in this Court.
8. Since there was no stay of passing of final decree and since the decree-holder had died after the suit was decreed and her legal

representatives were brought on record in the A.S.No.26 of 2013, the legal representatives filed I.A.No.168 of 2016 to appoint an Advocate-Commissioner for making division of the suit schedule property as per the preliminary decree.

9. This application was opposed by petitioner and other defendants on the ground that there is no necessity to appoint an Advocate-Commissioner to partition the suit schedule property as the right of the plaintiff ended due to her death, and the applicants in I.A.No.168 of 2016 are not legal heirs to original plaintiff.

10. The Court below noted that the suit was already decreed and petitioners were shown to be her legal heirs under a dependent certificate dt.13.05.2011 produced by petitioners and the said I.A. was allowed appointing an Advocate-Commissioner.

11. Assailing the same, the present Civil Revision Petition is filed.

12. The counsel for petitioner contended that Section 26 of the Hindu Succession Act, 1955 would be attracted and petitioners cannot claim any property after the death of plaintiff.

13. This point had already been argued in A.S.No.26 of 2013 by appellants therein. There is a finding adverse to petitioner and other respondent nos.8 to 11.

14. Since it is stated that Second Appeal No.440 of 2018 against the judgment in A.S.No.26 of 2013 is pending before this Court, I do not wish to decide the said question in this Civil Revision Petition.

15. As things stand, there is a preliminary decree for partition which has also been confirmed in A.S.No.26 of 2013 and there is no stay of passing of final decree. Therefore, there cannot be any valid objection for the appointment of an Advocate-Commissioner for making division of the suit schedule property.

16. Of course, if the Second Appeal is allowed, accepting the contention raised by petitioner, then whatever exercise the Advocate-Commissioner had done by that time would be futile and unnecessary.

17. I therefore do not find any merit in the Civil Revision Petition and it is accordingly dismissed. No costs.

18. It is made clear that this Court has not expressed any opinion as to the entitlement of the persons claiming through Smt. Palakonda Devamma / Khatija Begum / plaintiff succeeding to her properties on her wish.

19. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15.03.2019

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