

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE TADAKAMALLA VINOD KUMAR**

C.M.A. NO.571 OF 2019

ORDER: (Per Hon'ble Sri Justice M.S. Ramachandra Rao)

This appeal is filed challenging the order dt.27.03.2019 in I.A. No.316 of 2018 in O.S. No.218 of 2018 of the V Additional District & Sessions Judge, Ranga Reddy District at L.B. Nagar. The appellants herein are plaintiffs in the suit.

2. They filed the said suit against the respondents for partition of the plaint schedule property and for allotment of 1/12th share to plaintiffs 1, 6 and defendant No.1, 1/48th share to plaintiffs 2 to 5, 1/9th share to plaintiffs 7 and 12, 1/36th share to plaintiffs 8 to 11 and 1/3rd share to defendants 1 and 2.

3. It is the contention of the appellants/plaintiffs in the Court below that the suit schedule property originally belonged to one Laxman Reddy along with other properties; that he died intestate long back leaving behind three sons of whom the 2nd respondent is one son; that during the life time of the said Laxman Reddy, all other properties were partitioned among his sons, except the suit schedule property and land of an extent of Ac.1.22 gts in Sy. No.75/A. They contended that they approached the respondents on 20.12.2017 and demanded for partition and separate possession of the suit schedule property and since nothing was done, they filed this suit.

4. Along with the suit, appellants filed I.A. No.316 of 2018 under Order XXXIX Rule 1 and 2 CPC for temporary injunction restraining them from alienating the suit schedule properties to third parties.

5. Counter-affidavit was filed by the respondents opposing the said application. They contended that during the life time of Laxman Reddy, there was an oral partition in 1965 of all the properties of the joint family; and the plea of the appellants that except the suit schedule property, and land in Sy. No.75/A of an extent of Ac.0.22 gts of other properties were partitioned, is not correct. They alleged that the suit schedule property was allotted to the 2nd respondent in the said partition. It is also contended that there were proceedings before the Tahsildar in File No.ROR/37/89 dt.24.01.1992 when the name of the 3rd respondent, who is the son of the 2nd respondent, was mutated as pattader and possessor, and that the revenue records indicate the possession of 2nd respondent prior to 1992 and that of the 3rd respondent from 1992.

6. Before the Court below, the appellants marked Exs.P-1 to P-22 and respondents marked Exs.R-1 to R-26.

7. The Court below dismissed I.A. No.316 of 2018 on 27.03.2019. It vacated the interim order granted in favour of the appellants initially.

8. Challenging the same, this appeal is filed.

9. In the impugned order, the Court below considered the contentions of both sides and also the exhibits marked by both sides and came to the conclusion that EXs.P-4, P-5 and P-7 which were pahanies for 1971-72, 1979-80 and 1984-85 show only the name of the 2nd respondent as a person cultivating the suit schedule property, and this is a strong circumstance to hold that the suit schedule property fell to the share of the 2nd respondent in the alleged oral partition. It also referred to Exs.P-8 to P-12 which are pahanies for the year 1994-95, 1999-2000 and 2005-2006, 2009-2010 and pahani for 1428 fasli

(2016-2017) and held that these pahanies would show the name of the 3rd respondent as pattadar and cultivator and these documents show that the enjoyment of the property was by the 2nd respondent and his son exclusively. It also observed that the Tahsildar, Shamshabad in Ex.R-21 had held that the suit schedule property fell to the share of the 2nd respondent in a partition.

10. It then concluded that the appellants have no *prima facie* case, there is no balance of convenience in their favour and the respondents 2 and 3 would suffer hardship if injunction is granted in favour of the appellants.

11. Assailing the same, this appeal is filed.

12. Though Counsel for the appellants sought to contend that there is no partition as was alleged by the respondents in 1965 of the entire properties of the family of Laxman Reddy and also sought to refer to certain exhibits to show that only in the cultivation column, the name of the 2nd respondent was mentioned prior to 1992, *prima facie*, it would be difficult to believe that there was only partial partition of the properties of Laxman Reddy during his life time as normally all the properties would be partitioned unless there is a specific reason why certain properties are kept joint for future. Also the name of the 2nd respondent appears in Exs.P-4 to P-7 prior to 1992 as the person cultivating the suit schedule property and the name of the 3rd respondent who is the son of the 2nd respondent is reflecting as the person cultivating the land in Exs.P-8 and P-12. Even the order in Ex.R-21 passed by the Tahsildar, Shamshabad records about the suit schedule property falling to the share of the 2nd respondent in the partition.

13. These circumstances probablise, *prima facie*, the contention of the respondents that there was a prior partition in which the suit schedule property was allotted to the 2nd respondent.

14. Therefore, we do not find any error of law or fact in the order passed by the Court below warranting interference by this Court.

15. Accordingly, the appeal fails and is dismissed at the admission stage. However, the Court below shall endeavour to decide the suit uninfluenced by any observations made by it in the impugned order or in the order passed by this Court in the CMA. No costs.

16. Miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

T. VINOD KUMAR, J

Date: 09.09.2019

MRKR