

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1410 of 2019

ORDER :

Heard Sri D.V. Chalapathi Rao, counsel for petitioners, and Sri R.K. Chitta, counsel for 1st respondent.

2. Respondent nos.2 to 5 are shown to be not necessary parties.
3. The 1st respondent herein filed Original Suit No.214 of 2013 before the V Additional District Judge, F.T.C. Warangal, at Jangaon for partition and separate possession of the plaint schedule properties against respondent nos.2 to 5 and also petitioners.
4. The petitioners were arrayed as defendant nos.3 and 5 in the suit as they had purchased item No.2 of the plaint schedule property from 2nd respondent.
5. It was the contention of the 1st respondent in the suit that he is the son of 2nd respondent and 3rd respondent is the sister of 1st respondent, and that they constitute Hindu Joint Family governed by Mithakashara school of Hindu Law; that 2nd respondent by name Smt. Kamamma, who is the mother of 1st respondent and 3rd respondent died thirty years prior to the suit, and then the 2nd respondent started residing with another lady by name Butchamma and also had two daughters through her. He sought 1/3rd share in the plaint schedule properties.

6. Later, I.A No.92 of 2017 was filed by the 1st respondent under Order 23 Rule 1 of Civil Procedure Code, 1908 to permit him to withdraw his claim regarding item No.2 of the plaint schedule property as against both petitioners as well as 4th respondent / 4th defendant on the ground that there was a compromise entered into with them. This application was allowed on 26.06.2015 by the Court below and item No.2 of the plaint schedule was deleted and petitioners were also removed from the array of parties.

7. Subsequently, 1st respondent filed I.A No.92 of 2017 invoking Section 151 of Civil Procedure Code, 1908 to recall the order dt.26.06.2015 passed in Interlocutory Application No.90 of 2015 and grant leave to amend the plaint to proceed with the suit against the petitioners, and also respondent nos.4 and 5.

8. In the affidavit filed in support of the said application he contended that the petitioners had hatched a plan to grab the suit schedule property of extent Ac.5.00 in Survey No.216/1/F of Jangaon Revenue Village (Item No.2) of the plaint schedule with the active support of a Gangster Nayeem and his supporters who threatened the 1st respondent, and the 2nd respondent forced them to register the land in the name of the petitioners as well as respondent nos.4 and 6 without paying any sale consideration by showing deadly weapons. He also alleged that he was forced to withdraw the suit against them by filing Interlocutory Application No.90 of 2015. He alleged that the said petition was filed under coercion and threat and after the

Gangster Nayeem was killed in an encounter by the police, the 1st respondent took up courage to file I.A No.92 of 2017. He therefore prayed that the said order dt.26.06.2015 passed in I.A No.90 of 2015 in Original Suit No.214 of 2013 be set aside.

9. Though notice in I.A No.92 of 2017 was sent by R.P.A.D. and though the petitioners received notices, they did not appear and contest the Interlocutory Application No.92 of 2017.

10. Therefore, the said I.A. was allowed on 18.06.2018 on payment of costs of Rs.500/- to District Legal Services Authority on the ground that the trial in the suit against the said defendants had not commenced and since the petitioners did not contest the same.

11. After the Interlocutory Application was disposed of and the petitioners were restored as defendants in the suit and Item No.2 was also restored in the plaint schedule, on 07.08.2018, the petitioners filed a counter-affidavit therein taking a stand that the sale deed was executed in favour of petitioners and the 4th respondent and the Interlocutory Application No.90 of 2015 was rightly ordered. They also claimed that they had executed sale deeds in favour of third parties after the compromise, and after execution of the sale deeds dt.25.04.2015 in respect of the land in Item No.2 of the plaint schedule property in their favor.

12. Challenging the same, the present Civil Revision Petition is filed.

13. It is the contention of counsel for petitioners that the Court below did not make any proper enquiry into the allegations leveled by the 1st respondent in Interlocutory Application No.92 of 2017 and it ought to have dismissed the same on the ground that more than two years have elapsed from the date of passing of orders in Interlocutory Application No.90 of 2015. It also contended that there is a bar under Section 3 of the Limitation Act to pass the said order.

14. The counsel for 1st respondent however refuted the said contentions and supported the order passed by the Court below.

15. I have noted the contentions of both sides.

16. It is not in dispute that petitioners did receive notices in Interlocutory Application No.92 of 2017 but did not file any counter thereto denying the allegations of 1st respondent about the use of coercion by them through the Gangster Nayeem and forcing 1st respondent's father, the 2nd respondent, to execute the document dt.25.04.2015 in favour of petitioners and 4th respondent.

17. No reason is assigned by petitioners why they did not chose to file any counter-affidavit to the said I.A No.92 of 2017 and why they filed counter-affidavit to the said I.A No.92 of 2017 almost two months after it was disposed of.

18. When the petitioners did not deny the allegations leveled in I.A No.92 of 2017 against them, there was nothing wrong in the Court below accepting the said allegations and recalling the order

dt.26.06.2015 passed in I.A No.90 of 2015 in Original Suit No.214 of 2013, by allowing IA 92 of 2017.

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

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 09.09.2019

Ndr

