

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T. VINOD KUMAR**

**I.A. No.1 of 2019 IN A.S. No.353 of 2019
AND
A.S. No.353 of 2019**

COMMON JUDGMENT: (per Hon'ble Sri Justice M.S. Ramachandra Rao)

This application is filed by the appellants for condonation of delay of 829 days in filing this appeal challenging the judgment and final decree dt.29.03.2016 in I.A. No.1143 of 2004 in O.S. No.63 of 1988 on the file of the I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar.

2. The said suit had been filed by the 1st respondent herein for partition of the suit schedule properties into four equal shares and for allotment of one such share to her.

3. Preliminary decree had been passed on 25.03.1996 wherein the 1st respondent was allotted 1/5th share and petitioners and one B. Sathamma who is the mother of the petitioner were allotted 1/5th share each.

4. Thereafter, I.A. No.1381 of 1997 filed by the 1st respondent-DHr seeking appointment of Commissioner to divide the suit properties into five equal shares and for allotment of one such share to the above parties.

5. The Advocate Commissioner conducted enquiry and then filed his report which was accepted by the Court below.

6. Thereafter, I.A. No.506 of 1997 was filed for passing of final decree.

7. The petitioners in the mean time had filed A.S. No.2691 of 1996 before this Court against the preliminary decree dt:25.03.1996 and the said appeal was allowed on 05.08.1999.

8. The 1st respondent then filed LPA No.235 of 1999 against the judgment in A.S. No.2691 of 1996 which was allowed on 05.03.2004 and the judgment of the trial court was restored.

9. In the mean time, Sathamma, the mother of the 1st respondent and the petitioners died on 29.05.1998.

10. On account of the said fact and since her share devolved on the petitioners and the 1st respondent, the 1st respondent became entitled to 1/4th share in the plaint schedule property.

11. After the dismissal of the LPA, the 1st respondent filed I.A. No.1143 of 2004 for appointment of an Advocate Commissioner to ascertain mesne profits from B schedule property of the plaint from the date of filing of the suit.

12. An Advocate Commissioner was then appointed and he filed his report ascertained the mesne profits. On the basis of the said

assessment, the Court below passed order on 29.03.2016 in I.A. No.1143 of 2004 that the petitioner should pay mesne profits of Rs.50,00,000/- to the 1st respondent within three months from the date of the said order.

13. In our considered opinion, such an order could not have been passed in I.A. No.1143 of 2004 and it should have been incorporated as part of the final decree in I.A. No.506 of 1997 which is the application filed by the 1st respondent to pass final decree.

14. Be that as it may, this appeal having been filed against the order dt.29.03.2016 in I.A. No.1143 of 2004 in O.S. No.63 of 1988 cannot be said to be maintained because the said application is only for appointment of Commissioner to determine mesne profits.

15. Therefore on the ground that the said appeal itself is not maintainable, there is no necessity for us to consider I.A. No.1 of 2019.

16. Therefore, both I.A. No.1 of 2019 and A.S. No.353 of 2019 are dismissed. No costs.

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

M.S. RAMACHANDRA RAO, J

T. VINOD KUMAR, J

Date: 30.08.2019

MRKR