

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.2599 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff, challenging the order, dated 01.08.2019, passed in I.A.No.824 of 2019 in O.S.No.591 of 2012, by the Senior Civil Judge at Khammam, whereby, the petition filed by the revision petitioner/plaintiff under Order XXIII Rule 3 read with Section 151 of CPC to delete the name of the respondents/defendants 6 & 7 from the array of the defendants and to withdraw the claim share of the revision petitioner/plaintiff in the land in an extent of Acs.1.23 guntas in Survey No.63, by deleting the land in an extent of Acs.1.23 guntas in Survey No.63, from item No.3 of the suit schedule property, was dismissed.

2. Heard the learned counsel for the revision petitioner/plaintiff and perused the record.

3. The learned counsel for the revision petitioner/plaintiff would contend that the Court below is not justified in holding that the consent of the defendant Nos.1 to 4 is necessary to withdraw the suit of the revision petitioner/plaintiff. It is not contemplated in Order XXIII Rule 1 of CPC. The impugned order passed by the Court below is erroneous and ultimately prayed to set aside the order under challenge and allow the Civil Revision Petition as prayed for.

4. Admittedly, the original suit in O.S.No.591 of 2012 was filed before the Court below for partition and separate possession. The parties to the litigation have rival contentions. These contentions are required to be addressed after due trial of the subject suit. Allowing the subject interlocutory application as prayed for would cause prejudice to the parties to the litigation. Full and final adjudication is required with regard to the entire subject matter of the suit. Under these circumstances, the Court below is justified in passing the impugned order. In the order under challenge as well as in the subject interlocutory application, instead of mentioning the provision of law as Order XXIII Rule 1 read with Section 151 of CPC, it is mentioned as Order XXIII Rule 3 read with Section 151 of CPC. However, quoting wrong provision of law would not disentitle the parties to seek appropriate relief. The application is required to be determined on merits. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

5. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

08th November, 2019
Bvv

Dr. SHAMEEM AKTHER, J