

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. No. 5541 of 2018

ORDER:

This Revision is filed assailing the order dt.13.04.2018 in I.A.No.1253 of 2015 in O.S.No.39 of 2015 of the XII Additional Chief Judge, City Civil Court, Hyderabad.

2. Petitioners herein are defendants 2 to 5 in the above suit, which was filed by the 1st respondent/plaintiff.

3. Petitioners as well as 1st respondent are the children of Y.Visweswar Rao and his wife Rajamani.

4. The 1st respondent filed the suit for partition and separate possession seeking 1/6th share in schedule A to D properties. He alleged that the 2nd respondent/1st defendant purchased properties in his name and that of his wife-Rajamani; all the properties are joint family properties; and that Rajamani being a house wife, has no independent source of income to purchase the properties.

5. Rajamani died prior to filing of the suit O.S.No.39 of 2015.

6. Petitioners herein filed Written Statement stating that the A-Schedule property is the own and exclusive property of Rajamani and that she executed Exs.R1 to R4 Gift

Settlement Deeds and also Ex.R10 a registered Will dt.21.06.2006 and under these documents she did not give any property to the 1st respondent/plaintiff.

7. Petitioners further alleged that the 1st respondent had sustained heavy loss and was indebted heavily in the market, and so the 2nd respondent sold some of his properties and cleared the debts and also gave sufficient money to the 1st respondent without the knowledge of other family members; that since the 1st respondent had become notorious and habituated to extort money from 2nd respondent and his wife-Rajamani, they filed O.S.No.11 of 2005 before the I Junior Civil Judge, Hyderabad for perpetual injunction; that in the plaint filed therein they mentioned the properties which were settled on the 1st respondent; and that 1st respondent/plaintiff filed written statement in the said suit stating in para 5 that except the items mentioned in para 7 of the plaint which were given to him, he did not have any right or claim whatsoever over the left over properties of the 2nd respondent or his wife Rajamani.

8. Pending suit O.S.No.39 of 2015, 1st respondent filed I.A.No.1253 of 2015 to direct respondents 3 to 8 to deposit monthly rents from April, 2015 onwards to the credit of the

suit alleging that he has a share in the said properties which belongs to Rajamani.

9. Counter was filed by the petitioners as well as the 2nd respondent opposing the said application.

10. The said I.A., was allowed on 13.04.2018 by the Court below. It observed that whether the property is self acquired property of 2nd respondent and his wife-Rajamani, or whether they purchased it from and out of the joint family funds, are aspects which cannot be decided in an I.A.; and since the petitioners were not disputing the quantum of rent being paid by respondents 3 to 8, though there is a dispute as to whether the 1st respondent had a share in the suit schedule properties, if 1/6th share of the rents is deposited in the suit till the disposal of the suit, no prejudice would be caused to the petitioners.

11. Assailing the same, this Revision is filed.

12. Counsel for the petitioners contended that having regard to the admission contained in the written statement filed by the 1st respondent in O.S.No.11 of 2005 which was marked as Ex.R7 in the said I.A., and also having regard to Exs.R1 to R4, Gift Settlement Deeds, and Ex.R10 Will Deed dt.21.06.2006 executed by late Rajamani, the 1st respondent

had no *prima facie* case; balance of convenience was also not in his favour, and the Court below grossly erred in allowing I.A.No.1253 of 2015.

13. Though counsel for the 1st respondent supported the order passed by the Court below, he is unable to explain how in the face of the admission contained in Ex.R7, written statement filed by the 1st respondent in O.S.No.11 of 2005 (that items 1 to 8 mentioned in para 7 of plaint in the said suit alone were given to his share and he had no interest in the other properties of his parents as well as his brothers), the Court below could have allowed I.A.No.1253 of 2015.

14. In fact, the order passed by the Court below does not indicate that the Court had even taken note of the admission of the 1st respondent in Ex.R7 or applied its mind to the same.

15. In my opinion, the Court below could not have ignored the admission of the 1st respondent contained in Ex.R7 that he had no right or interest in the other properties of his parents other than Items.1 to 8 mentioned in para 7 of the plaint in O.S.No.11 of 2005, and it also could not have ignored the registered Gift Settlement Deeds, Exs.R1 to R4, and R10 Will Deed executed by late Rajamani, disposing of

her properties to the petitioners and not to the 1st respondent. Therefore, the order passed by the Court below cannot be sustained.

16. Accordingly, this Civil Revision Petition is allowed; the order dt.30.04.2018 in I.A.No.1253 of 2015 in O.S.No.39 of 2015 of the XII Additional Chief Judge, City Civil Court, Hyderabad is set aside and the said I.A., is dismissed. However, the Court below shall decide the suit uninfluenced by the observations made in this order or in the order passed by it. No order as to costs.

17. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

18th March, 2019.

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