

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

City Civil Court Appeal No.404 of 2018

JUDGMENT:

This City Civil Court Appeal, under Section 96 of the Code of Civil Procedure, 1908, is filed by the appellant/plaintiff, challenging the decree and judgment, dated 10.09.2018, passed in O.S.No.354 of 2015, by the III Additional Senior Civil Judge, City Civil Court, Secunderabad, whereby, the suit filed by the appellant/plaintiff for partition of the suit schedule property and allotment of 1/5th share to him, was decreed, holding that the respondents/defendants are entitled for recovery of mesne profits to the extent of their shares from the appellant/plaintiff since the year 2007, as he is in possession of the suit property without paying any amount.

2. Heard the learned counsel for both the sides and perused the record.

3. The learned counsel for the appellant/plaintiff would contend that without there being any relief sought in the suit, the Court below erred in determination of the mesne profits in favour of the respondents/defendants. On this score alone, the impugned decree and judgment is liable to be set aside and ultimately prayed to set aside the decree and judgment under challenge and allow the appeal as prayed for.

4. On the other hand, the learned counsel for the respondents/defendants would contend that the

appellant/plaintiff filed the suit for partition of the suit schedule property and allotment of 1/5th share to him. The Court below was pleased to grant the same. There is no illegality in the judgment under challenge and ultimately prayed to dismiss the appeal.

5. It is evident from the record that the appellant/plaintiff filed a suit for partition of the suit schedule property and for allotment of 1/5th share to him. The Court below, having examined the entire evidence and the submissions made by both sides, was pleased to allot the shares as well as mesne profits as indicated in the impugned judgment and decree. The Court below is justified in passing the said order. Under these circumstances, no illegality is found in the decree and judgment under challenge. The appeal is devoid of merit and is liable to be dismissed. It is needless to state that if there is any variation with regard to execution of the subject decree, the appellant/plaintiff is entitled to workout the remedies available under law.

6. The appeal is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

14th November, 2019
Bvv

Dr. SHAMEEM AKTHER, J