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Court : Andhra Pradesh

Decided On : Jul-20-2010

Judge : Sri Gopala Krishna Tamada, J.

Acts : [Constitution of India](#) - Article 227,

Appeal No. : CIVIL REVISION PETITION NO.2729 OF 2010

Appellant : Kudumula Kishore Reddy

Respondent : Kudumula Krishna Reddy and ors.

Advocate for Pet/Ap. : Mr. K.Sreenivas, Adv.

Judgement :

1.This revision, under Article 227 of the [Constitution of India](#), is directed against the order dated 28.06.2010 passed by the learned District Judge, Mahaboobnagar in CFR No.2552 of 2010 whereby the plaint filed by the petitioner herein was returned.

2.Facts, in brief, are that the revision petitioner filed the suit for partition in C.F.R.No.2552 of 2010 before the learned District Judge, Mahaboobnagar seeking partition and separate possession of his due share out of the suit schedule property basing on a Will dated 27.12.2006 said to have been executed by his paternal grand father by name Kudumula Janga Reddy, who is the half share holder of the suit schedule property. However, the court below took an objection stating that the suit for partition is not maintainable basing on a Will and returned

the plaint by its order dated 28.06.2010. The same is questioned in this revision.

3. Since the present issue is in between the Court and the petitioner, the usual notice to the respondents is dispensed with.

4. The learned counsel for the petitioner Mr. K. Srinivas contended that at the stage of numbering of the suit itself, the court below had gone into the merits of the case and decided the issue involved in the suit which amounts to final disposal of the matter. He further contended that by virtue of the said Will dated 27.12.2006, after the death of Janga Reddy the petitioner stepped into the shoes of the said Jangareddy who is a coparcener of respondents 1 to 4 and can seek for partition of the suit schedule properties as per the said Will. He finally contended that though the Court below had simply returned the plaint, but, it amounts to rejection of plaint since the plaint is returned not for presentation of the same before proper court as envisaged under Order VII Rule 10 CPC and hence the order impugned in this revision amounts to an order passed under Order VII Rule 11 CPC and becomes a reversible order. The learned counsel for the petitioner relied on 1) *Suryalaxmi Cotton Mills Limited, Secunderabad v. Sabhavath Kishore*¹, *Ram Prakash Gupta v. Rajiv Kumar Gupta*², *Thanamki Prasad v. Guntamadugu Pullamma and others*³ and *S.C. Bose & Co v. G. Srikanth*⁴.

5. Keeping in view of the specific contentions raised by the learned counsel for the petitioner, this court deems it appropriate to refer to Order VII Rule 10 CPC, which reads as under:

Return of Plaint: (1) Subject to the provisions of Rule 10-A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. 6

In view of the above legal provision, this court, when it looks into the order impugned in this revision, is of the opinion that the said order passed by the learned District Judge, Mahaboobnagar is contrary to the above said legal provision since the plaint was not returned for want of jurisdiction and for presentation of the same before the competent court having jurisdiction. So on that aspect the order impugned is contrary to the legal provision since the language of

Order VII Rule 10 of the Code is not attracted. Hence it should be treated as an order passed under Order VII Rule 11 CPC i.e. rejection of plaint, which reads as under:

Rejection of Plaint: The plaint shall be rejected in the following cases:

- a) Where it does not disclose a cause of action,
- b) Where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so; d)
- Where the suit appears from the statement in the plaint to be barred by any law;

7. As seen from the order impugned it is clear that the learned District has gone deep into the merits and probabilities of the case and came to the conclusion that as per the documents field by the petitioner already a partition was effected between the father of the petitioner and his brothers and further stated that since the plaintiff is relying on the Will deed in support of his case, the suit for partition is not maintainable. This finding, in the considered opinion of this court is unwarranted at the stage of numbering the suit.

8. Further, as seen from the impugned order, the learned District Judge observed that the claim for partition of part of ancestral property is not maintainable, which in my considered opinion is also not correct inasmuch when there are numerous cause of actions joined in one claim, it is not permissible to the court to reject the claim if it is possible to give a decree for some of the cause of actions. So instead of taking some part of the averments of the plaint, the court should have taken the pleadings of the plaint entirety.

9. In Thanamki Prasad case (3 supra) a learned Judge of this court held that at scrutiny stage of the case, no court can appreciate merits of case and reject plaint on the ground that case of plaintiff is not well founded or devoid of any merits

unless defect goes to root of matter.

10. In the facts and circumstances above, this court is of the view that the court below, as rightly contended by the learned counsel for the petitioner, has not returned the plaint for presentation before the proper court, but it had straight away returned the same without any further course of action to be followed, which in the considered opinion of this court is not correct. Accordingly the said order passed by the court below is liable to be set aside.

11. In the result, this revision is allowed and the order dated 28.06.2010 passed by the learned District Judge, Mahaboobnagar in CFR No.2552 of 2010 is hereby set aside. The court below is hereby directed to number the suit and proceed in accordance with law. No costs.

1 2008 ALD (5) 82

2 2007 (TLS) 44721

3 2005 (4) ALD 247

4 2006(4) ALT 589

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