

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

TUESDAY, THE TWELFTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE MS. JUSTICE B.S. BHANUMATHI

CIVIL REVISION PETITION NO: 2734 OF 2022



Petition under Article 227 of Constitution of India aggrieved by the order dated 06.12.2022 in I.A.No.165 of 2022 in O.S.No.45 of 2014 on the file of the Court of the Principal District Judge, Chittoor, Chittoor District.

Between:

1. V.Maheswari, W/o.Late S.Vasudeva Achari, Aged about 58 years, Hindu, Housewife,
2. V.Anand, S/o.Late S.Vasudeva Achari, Aged about 36 years, Hindu, Employee,
3. V.Prasanth, S/o.Late S.Vasudeva Achari, Aged about 32 years, Hindu, Employee,

All are residents of D.No.4-1042/3, Gayathri Nagar, Greampet, Chittoor.

...Petitioners/Petitioners

AND

1. S.Bhaskarachari, (died on 21.04.2020) by LRs
2. S.Chandrasekharachari, S/o.Late M.Shanmugachari, Aged about 64 years, Hindu, Business, R/o.D.No.4-1970/1, Durga Nagar Colony, Greampet, Chittoor.
3. K.Hemalatha, W/o.C.Krishnamachari, Aged about 66 years, Hindu, Housewife, R/o.D.No.15-2163, Palamaner Road, Chittoor.
4. S.Jayamma, (died on 15.05.2021).

5. B.Suseela, W/o.S.Bhaskarachari, Aged about 59 years, Hindu, Housewife, R/o.D.No.4-1994/3, Durga Nagar Colony, Greampet, Chittoor.
6. P.L.Gajendra, S/o.P.Lokanatham, Aged about 43 years, Hindu, Business, R/o.D.No.17-353, Subedar Street, Chittoor Town, Chittoor Mandal, Chittoor District.
7. B.Sruthi, D/o.Late S.Bhaskarachari, W/o.S.Krishna Kumar, aged about 28 years, Hindu, Housewife, R/o.D.No.4-1994/3, Durga Nagar Colony, Greampet, Chittoor Town, Chittoor Mandal, Chittoor District.
8. V.Santhosh Kumar, S/o.Late S.Vasudeva Achari, Aged about 37 years, Employee, R/o.D.No.4-1042/3, Gayathri Nagar, Greampet, Chittoor.

(8th Respondent is not necessary party)

...Respondents/Respondents

IA NO: 1 OF 2022

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to stay of all further proceedings in O.S.No.45 of 2014 on the file of the Court of the Principal District Judge, Chittoor, pending disposal of the Civil Revision Petition.

Counsel for the Petitioners: SRI M. VENKATA RAMANA REDDY

Counsel for the Respondent Nos.5 & 7: SRI G. SEENA KUMAR

The Court made the following: ORDER

ORDER:

This revision, under Article 227 of the Constitution of India, is filed against the order, dated 06.12.2022, dismissing the petition in I.A.No.165 of 2022 in O.S.No.45 of 2014 on the file of the Court of the Principal District Judge, Chittoor, filed by the plaintiffs under Order 18 Rule 3 CPC to permit the plaintiffs to close their evidence for the present and to adduce rebuttal evidence after closure of the evidence of the defendants with regard to issues No.5 & 7 and other issues.

2. Heard *Sri M. Venkata Ramana Reddy*, learned counsel for the petitioners and *Sri G. Seena Kumar*, learned counsel for the respondents No.5 & 7.

3. The petitioners contended that the suit is filed for declaration that the registered partition deed, dated 28.02.2002, is null and void and to set aside the same etc., and that the 1st plaintiff was examined as PW1 and the matter is posted for further evidence. The defendants opposed the suit on the ground that the plaint schedule properties were already divided and hence, the burden of proof of partition as pleaded by the defendants is on them and it is only after adducing evidence of the defendants with regard to the said plea and issues and the other pleas, the plaintiffs have to adduce further evidence as rebuttal evidence.

4. The petition was opposed by filing counter stating that the plaintiffs have to produce all their evidence and they have no right to reserve their

right to adduce rebuttal evidence and that having adduced evidence through PW1, now the relief is sought by way of this petition. It is further stated that option is to be exercised at the time when the party having right to begin and states his case. In the present case, PW1 stated about all the issues and therefore, option cannot be exercised. In this regard, it is further stated that right to adduce rebuttal evidence must be before adducing evidence on the issues and that having commenced the evidence and adduced evidence with regard to the issues, now, the plaintiffs have no right to seek permission in this regard. It is also contended that the petition was filed at a belated stage to prolong the proceedings and there is no merit in the petition.

5. After hearing both parties, the trial Court dismissed the petition observing that reserving right to lead rebuttal evidence need not be express but could be implied and that where the party had not adduced any evidence on a particular issue, the mere fact that specific reservation was not made was not fatal unless there is anything in the record either expressly or impliedly to hold that the party lost its right to adduce evidence. It is also observed that it is settled proposition of law that in a civil suit when a party approaches the Court at first seeking legal remedy, the burden lies on such party to prove his/her case, but the said party cannot be permitted to rely on the weakness of the other side. It is further observed that having taken into consideration over all facts and circumstances, the Court was of the view that rules of procedure are

handmaid of justice and therefore, in the absence of specific assertion/submission on behalf of the petitioners/plaintiffs that they discharged the legal burden on them with regard to specific issues; then, it is for the respondents/defendants to adduce evidence on issues No.5 to 7.

6. Aggrieved by the aforesaid order, this revision petition is preferred.

7. The following issues were framed by the trial Court:

- "1. Whether all the plaint schedule properties are ancestral properties of plaintiffs and defendants?
2. Whether the plaint B schedule properties are the self acquired properties of one Shanmugachari, who is ancestor of plaintiffs and defendants?
3. Whether Shanmugachari executed a will dated 19.10.1996 by bequeathing item No.1 of plaint B schedule properties to 2nd defendant? if so,
4. Whether Shanmugachari is competent to bequeath item No.1 of plaint B schedule properties to 2nd defendant and the same is binding on plaintiffs?
5. Whether the registered partition deed entered among Shanmugachari, his sons and daughters on 28.02.2022 is true and valid document? If so, whether it is binding on plaintiffs? If not
6. Whether the plaintiffs are entitled for the relief of declaration that the partition deed dated 28.02.2002 is null and void as prayed for?
7. Whether the other properties other than items 1 and 2 of plaint schedule properties were partitioned among the family members as mentioned in the partition deed dated 28.02.2002?
8. Whether C schedule properties are the properties of 5th defendant? If not whether they were purchased by 1st defendant with the joint family money?

9. Whether the 2nd defendant is entitled to execute by seeking half portion of item No.1 of plaint B schedule property to 6th defendant?
 10. Whether the plaint schedule properties are liable for partition?
If so, what is the share of plaintiffs?
 11. To what relief?"
8. According to the plaintiffs, the registered partition deed, dated 28.02.2022 is invalid and therefore, the initial burden lies on the plaintiffs to establish the same. On this aspect, issue No.5 was framed. Issue Nos.6 & 7 would follow the finding on issue No.5.
9. At this juncture, it is apt to refer Order 18 rule 3 CPC and it is excerpted hereunder:

"3. Evidence where several issues.

- Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case."
10. A perusal of the issues shows that the initial burden of establishing all these issues lies on the plaintiffs alone. It is not a case of a normal partition suit wherein, if the plaintiffs claim that the plaint schedule property is joint family property and the defendants take a plea that the

property was already partitioned, the burden may lie on the party pleading earlier partition. Whereas, in the present case, the plaintiffs already admitted that there is a registered partition deed, dated 28.02.2022, and seek declaration of the same as null and void. Therefore, they cannot throw the burden of proving any of the issues on the defendants. Order XVIII Rule 3 applies where the burden lies on one party with regard to some issues and the other party with regard to other issues, which is not the case on hand. As such, this Court does not see any reason to interfere with the order impugned in this revision.

12. Accordingly, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SD/- M PRABHAKAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal District Judge, Chittoor, Chittoor District (**with records if any**)
2. One CC to Sri M. Venkata Ramana Reddy, Advocate [OPUC]
3. One CC to Sri G. Seena Kumar, Advocate [OPUC]
4. The Section Officer, V.R. Section, High Court of A.P. at Amaravathi.
5. **Three CD Copies**

sree

Pujitha

HIGH COURT

DATED:12/03/2024

ORDER

CRP.No.2734 of 2022

7 copies
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28/4/24



DISMISSING THE C.R.P.
WITHOUT COSTS