
(2006) 04 AP CK 0045
In the Andhra Pradesh High Court
Case No : CMA No. 359 of 2006

Bollareddy Brahmananda Reddy and Another	APPELLANT
Vs	
Bollareddy Seethayamma @ Seethamma	RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : (2006) 4 ALD 479 : (2006) 6 ALT 207

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A. Sudershan Reddy, for the Appellant; Venkateswara Rao Gudapati, for the Respondent

Judgement

L. Narasimha Reddy, J.—This C.M.A. is filed by the defendants in O.S. No. 151 of 2004, on the file of the Senior Civil Judge, Nuzivid, Krishna District.

2. The appellants are the sons of the respondent herein. The respondent filed the suit, for the relief of declaration of title and recovery of possession, in respect of the suit schedule property. According to her, the suit land was originally owned by her father, and he gifted the same to her, through a gift deed dated 3-12-1957. It was her case that ever since then, she is in possession and enjoyment of the property, and that during the life time of her husband, he was looking after it. She contended that after the death of her husband in the recent past, the appellants have taken over the possession of the property and denied her any benefit of it.

3. The respondent filed I.A. No. 1993 of 2004, under Order 40 Rule 1 C.P.C., for appointment of a Receiver. The application was resisted by the appellants herein. Through order dated 12-4-2006, the trial Court allowed the LA. Hence this C.M.A.

4. Sri A. Sudershan Reddy, learned Counsel for the appellants, submits that the only allegation made by the respondent in her I.A., while seeking appointment of Receiver, was that the appellants were not properly cultivating the land and

manuring it, and even if such an allegation is taken to be true, it cannot constitute the basis for appointment of a Receiver.

5. Sri Venkateswara Rao Gudapati, learned Counsel for the respondent, on the other hand, submits that the appellants have no title or right over the suit schedule property, and taking advantage of the fact that the respondent is a widow, they are enjoying it, detrimental to the interests of their mother, the respondent herein.

6. The respondent filed the suit against her sons, for the relief of declaration of title and recovery of possession. She based her claim upon a gift deed dated 3-12-1957, said to have been executed by her father. The appellants, on the other hand, pleaded that the property had passed on to the joint family, on the strength of a will executed by the father of the respondent herein. That, however, is a matter, which needs to be dealt with, during the trial of the suit.

7. The respondent filed an application, under Order 40 Rule 1 C.P.C., for appointment of a Receiver. In the affidavit filed in support of the I.A., the main contention advanced by her is that the appellants are not conducting the agricultural operations, at the proper time, and that they are not manuring the lands, at appropriate time. Her apprehension is that on account of the lapse on the part of the appellants, the yield would deplete. The affidavit is silent as to how she lost her control over the land, or as to what used to be the usufruct or benefit derived out of the land. A Receiver cannot be appointed in respect of agricultural lands, that too in a dispute between the same family members, just for the asking of it. The person, who is denied of any benefit, can certainly be compensated, by requiring the other party to make good of it. Further, putting the agricultural lands in the hands of third parties, would have its own adverse consequences. An activity, which needs day-to-day attention and protection of the land, from so many unfavourable circumstances, cannot be expected from a Receiver. The interests of the respondent herein can be protected, by directing that she be paid a sum of Rs. 4,000/- per month.

8. Hence, the C.M.A. is allowed, and the order under appeal is set aside. The I.A. shall stand dismissed, however, subject to the condition that the appellants shall deposit a sum of Rs. 4,000/- (four thousand) per month, commencing from 1st May 2006. To avoid further complications in the matter, it is directed that the appellants shall take out a demand draft and send the same to the respondent herein through registered post, in such a way as to reach her, on or before 10th of every month, commencing from May 2006. It is made clear that in case, any steps have been taken, in pursuance of the order under appeal, all of them shall stand annulled, and the appellants shall be entitled to remain in possession of the land. The trial Court shall endeavour to dispose of the suit itself, by the end of 2006.

9. There shall be no order as to costs.