
(1991) 12 AP CK 0045

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 946 of 1989

Chundru Srinivasa Rao and Another

APPELLANT

Vs

Chundru Venkata Rao and Another

RESPONDENT

Date of Decision : 26-12-1991

Acts Referred:

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

Citation : (1992) 2 ALT 733

Hon'ble Judges : Radhakrishna Rao, J

Bench : Single Bench

Advocate : K. Srikrishna, for the Appellant; S. Dasaratha Rami Reddy, for the Respondent

Final Decision : Allowed

Judgement

Radhakrishna Rao, J.—This appeal is filed against the dismissal of I.A.No. 127/89 in O.S.No. 44/88 on the file of the Subordinate Judge's Court, Ramachandrapuram. This I.A.No. 127/89 was filed by the appellants herein for appointment of a receiver to take possession of the plaint A schedule landed properties together with standing crop and to manage the same during the pendency of the suit.

2. Petitioners 1 and 2, appellants herein, and the 2nd defendant are the sons of the 1st defendant. The suit was filed by the appellants herein for partition of the suit properties alleging that their father is not providing anything to them for their livelihood. In cases like this the party which will be in possession of the major portion of the property always enjoys and the other party suffers. Therefore, the normal rule that no receiver can be appointed in cases of partition has to be deviated in such circumstances as of the present case. Whenever major part of the landed property has been in possession of one person only, then whether there is good crop or there is no crop, ultimately the losers are the persons who are not in possession of any property at all. Besides, while the person who is not in possession of any of the properties suffers from lack of

anything for maintenance, there is every possibility of the person holding the property either misusing the amounts or screening the income that would be derived. Under these circumstances this Court feels that appointment of a receiver also is one of the considerations that has to be taken into account and the courts should not be carried away by the general principle enunciated in the old cases that in case of partition there cannot be appointment of a receiver. In this case whatever be the nature of the property held by the parties and the source of the property and how this property became the self-acquired property of the 1st defendant, when these two sons do not have any means to maintain themselves pending disposal of the suit, prima facie it appears that the matter has not been decided properly taking into account all the documents that have been filed. Therefore, the order of the lower Court dismissing I.A.No. 127/89 is set aside.

3. At one stage my learned Brother V. Neeladri Rao, J directed the 1st defendant in the suit to deposit a sum of Rs. 14,000/-. But as there is no proper service on the respondent-defendants that order is set aside. The lower Court is directed to dispose of the I.A.No. 127/89 afresh within one month from the date of receipt of a copy of this order uninfluenced by the observations made herein including the point that how the property has been acquired by the father. The C.M. A. is accordingly allowed and the matter is remitted back to the lower Court. No costs.