

(1971) 09 AP CK 0008

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 360 of 1971

K. Laxmamma and Others

APPELLANT

Vs

N. Yadagiri Rao and Another

RESPONDENT

Date of Decision : 15-09-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, 115

Citation : AIR 1972 AP 240 : (1972) 2 AnWR 246

Hon'ble Judges : Muktadar, J

Bench : Single Bench

Advocate : T. Veerabhadrayya, for the Appellant; J.V. Suryanarayana, for the Respondent

Judgement

Muktadar, J.—This revision is directed against the order dated 19-11-70 of the District Judge, Warangal, allowing O. P. No. 16/70 on his file which was an application for permission to sue in forma pauper is, Plaintiffs Nos. 1 and 2 in the said application are brothers, and the 1st defendant is the mother of the plaintiffs. Defendants Nos, 2 and 3 are the brothers of the 1st defendants, and Defendants Nos. 4 and 5 are the daughters of Venkata Ramana Rao, who was the paternal uncle of the plaintiffs. Defendant No. 6 is the husband of the 5th defendant. The other defendants are either cultivators or tenants of some of the suit property. IN the petition, it is claimed that plaintiffs Nos. 1 and 2 are entitled to 8/9th share in the schedule property and that the 1st defendant who is the mother of the plaintiffs is entitled to 1/9th share. The valuation of "A" Schedule property is stated to be Rs. 1,97,355/-. The valuation of "B" Schedule property, which is a house, is fixed at Rs. 10,000/- and the valuation of "C" Schedule property is fixed at Rs. 3500/-. According to the plaintiffs, the Court-fee that has to be paid is Rs. 4096/- . The contesting defendants to this O. P., are defendants Nos. 4 to 6, who are the petitioners in this revision petition. They alleged that the plaintiffs have the means to pay the Court-fees and, therefore, the petition should be dismissed. It is to be noted that the plaintiffs are minors and they are represented by the next friend who admittedly is not a legal guardian. The

contesting defendants mentioned above raised the plea that they did not claim any interest in the "B" Schedule property and the plaintiffs can raise money by mortgaging the suit house mentioned in the "B" Schedule property. The lower Court allowed the petition of the plaintiffs and held that the "B" Schedule property cannot be taken into consideration in deciding whether the plaintiffs have means or not, and secondly that since the next friend is not a legal guardian, he does not have power to raise funds by mortgaging the property.

2. The learned Advocate for the petitioner contends that both these grounds are not tenable and argues that the "B" Schedule property has to be taken into account, and also that the next friend who is a stranger has been brought in purposely with male fides. The learned advocate for the petitioner contends that under Explanation I (A) to Rule 1 of Order 83, C. P. C ., the subject-matter of the suit is not to be excluded but should be taken into consideration. The learned advocate for the respondent does not seriously oppose this argument. I am of the opinion that "B" Schedule property admittedly is the subject-matter of the suit. In spite of the fact that there is no contest with regard to the "B" Schedule property, and having regard to the provisions of Explanation I (a) to Rule 1 of Order 33, C. P. C., (B) Schedule property cannot be excluded and should be taken into consideration.

3. With regard to the second question as to whether the next friend has been brought in purposely with mala fide intention, it is to be noted that such a plea was not at all taken in the counter filed by the petitioners herein. In the counter filed by Defendants Nos. 4 to 6 on 3-10-1967, the plea of male fides was not at all raised. Moreover, the objection regarding the competence of the next friend to mortgage the property or to raise loan on the property for the purpose of payment of Court-fees, or even the maintainability of the suit was not raised. It was specifically pointed out in the memo that the house in the "B" Schedule property could be sold or mortgaged and that they are prepared to advance the amount if the minor petitioners are willing to hypothecate the said "B" Schedule property. This challenge was accepted by the plaintiffs, and it seems the matter ended then and there. In such circumstances, it is difficult to hold that there was any mala fides in filling the suit through the next friend, a stranger who admittedly cannot have the power to raise funds by mortgaging or alienating the "B" Schedule property. I see no reason to interfere with the order of the lower court to this extent.

4. I have mentioned earlier that "B" Schedule property being the subject-matter of the suit cannot be excluded but should be taken into consideration as provided under Explanation I (a) to Rule 1 of Order 33, C. P. C . Moreover, it is to be noted that in a case of this kind, it is the State that is primarily interested in questioning the legality or the correctness of the order of the lower Court and it is not for the petitioners to agitate the same in revision. I am supported in my view by a ruling of the Madras High Court in Chinnamani Nadar v. Devagirubai Rajan 1958 2 Mad LJ 93, wherein it was held that it is the State that is primarily

interested in questioning the legality or correctness of the order of the trial Judge granting leave to sue in forma pauper is. Thus there is no occasion for interfering with the operative portion of the order of the lower court.

5. The revision petition is, therefore, dismissed with costs.

6. Revision dismissed.