

(2006) 06 AP CK 0029

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1208 of 2006

Kavuru Ramakrishna and Others

APPELLANT

Vs

Kurella Nagamani and Others

RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2006) 5 ALD 510

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S.V.R. Subramanyam, for the Appellant; A.V. Sesha Sai, for the Respondent

Judgement

L. Narasimha Reddy, J.—The petitioners, who are the plaintiffs in O.S. No. 27 of 1992 on the file of the learned Senior Civil Judge, Narsapur, feel aggrieved by the order, dated 06.02.2006, passed in I.A. No. 610 of 2003.

2. The petitioners filed the suit, against respondents 8 to 12 herein, for the relief of partition and separate possession. A preliminary decree was passed on 30.03.1999. At that stage, One Mr. Nageswara Rao filed I.A. No. 313 of 2001 to get himself impleaded in the suit, stating that he purchased one of the items of suit schedule property from respondent No. 12 herein (Defendant No. 5). While this I.A. was pending, he died on 07.06.2003, and no steps were taken by his legal representatives, to come on record.

3. Respondents 1 to 7 herein, who are said to be the legal representatives of late Nageswara Rao, filed I.A. No. 610 of 2003 under Order I Rule 10 C.P.C. to get themselves impleaded in I.A. No. 681 of 1999, which was filed for final decree. The application was opposed by the petitioners. Through its order, dated 06.02.2006, the trial Court allowed the I.A.

4. The learned Counsel for the petitioners submits that once I.A. No. 313 of 2001 filed by the ancestor of respondents 1 to 7 was abated, on account of his death,

there was no justification or basis for respondents 1 to 7 to file an independent application under Order I Rule 10 C.P.C. He further contends that even otherwise, the trial Court had broadened the scope of the final decree proceedings vis-?-vis respondents 1 to 7, through its observations in para No.16 of the impugned order.

5. The learned Counsel for respondents 1 to 7, on the other hand, submits that mere abatement of an application filed by late Nageswara Rao does not disentitle his clients to file an independent application. He further submits that the apprehension of the petitioners, as to the impact of the observation of the trial Court in para No.16, is misplaced.

6. After the preliminary decree, dated 30.03.1999, in O.S. No. 27 of 1992 attained finality, the petitioners filed I.A. No. 681 of 1999 for final decree. An Advocate Commissioner is said to have been appointed to divide the suit schedule property into parts and to allot the same to the respective sharers. At that stage, one Mr. Nageswara Rao, the ancestor of respondents 1 to 7, filed the application to get himself impleaded, alleging that he purchased one of the items of suit schedule property from respondent No. 12 herein. His effort was obviously, to work out equities, and to insist that the item of property purchased by him, be allotted, to the share of respondent No.12 herein. Even while the application was pending, he died.

7. It is true that respondents 1 to 7 ought to have taken steps to file an application under Order XXII CP.C., to come on record as legal representatives of late Nageswara Rao. However, filing an independent application under Order I Rule 10 C.P.C . is not barred. If the alienation of an item of property by respondent No.12 in favour of late Nageswara Rao is true, respondents 1 to 7 derive a right to insist that the said item of property be allotted to the share of respondent No.12, in the ultimate partition.

8. The Order of the trial Court insofar as it had impleaded respondents 1 to 7 as parties to the suit, cannot be found fault with. The trial Court proceeded to observe in para No.16 of its order as under:

16. Therefore, the petitioners are entitled to make their defence to claim the part of the schedule properties to their own and the same shall be discussed and decided for giving specific finding regarding their ownership on merits and so, it is just and necessary to implead them as parties to the Final Decree Proceedings in I.A. No. 681/99. Accordingly, the point is answered.

9. The said paragraph needs to be clarified in certain aspects. The question of undertaking any discussion in the final decree proceedings, as to the claim or entitlement of respondents 1 to 7 does not arise. The purpose of impleading respondents 1 to 7 in the suit shall be restricted and confined, only to the extent of insisting that the item of property said to have been purchased by them, be allotted to the share of respondent No.12, if it is otherwise possible. Beyond that, they cannot be permitted to agitate their claim, either against the petitioners

herein or even against respondent No.12. If any necessity arises as to adjudication of the claim of respondents 1 to 7 vis-?-vis respondent No.12, the same has to be worked out in a separate set of proceedings and not in this.

10. With the said clarification, the Civil Revision Petition is disposed of. There shall be no order as to costs.