

(1997) 11 AP CK 0084

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2353 of 1997

Mannam Anjamma

APPELLANT

Vs

N. Nageswara Rao and Another

RESPONDENT

Date of Decision : 10-11-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 5
Hindu Marriage Act, 1955 — Section 5

Citation : (1997) 6 ALT 645 : (1998) 1 DMC 688

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : T. Rajendra Prasad, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

B.K. Somasekhara, J.—The respondent has been notified. But not present. Heard on merits. The order of the learned Addl. Subordinate Judge, Ongole in 1 .A. No. 784/97 in O.S. No. 158/90 dated 25.4.1997 is challenged. It is an application under Order 14, Rule 5, CPC r/w Section 151, CPC to recast the issues and to frame additional issues. The learned Subordinate Judge allowed the application and recast the six issues on his own in para 16 of the order which read as follows :

"(1) Whether the plaintiff is entitled for a decree for partition of the plaint schedule properties into 2 equal halves and possession of one such share in the plaint schedule properties ?

(2) Whether the plaintiff is entitled to future profits, to be determined on a separate application to be recovered from the defendants or the person who is in possession of the share of Kotamma ?

(3) Whether any body on behalf of late Kotamma, the minor shared any income or was inducted into possession or enjoyed the property of late Kotamma ?

(4) Whether the Will said to have been executed by Lingaiah is a nominal Will and not acted upon ?

(5) Whether the suit is not in time ?

(6) To what relief?"

The grievance of the petitioner who is the defendant in the suit is that the marriage of plaintiff and Kotamma was challenged on the ground that it was hit by Section 5 of the Hindu Marriage Act as she was a minor at the time of the marriage and therefore, such an issue ought to have been framed. The learned Subordinate Judge dealt with the matter in para 11 of the order actually giving a finding that the marriage is not void or voidable. This part of the impugned order of the learned Subordinate Judge cannot be supported in law. Order 14, Rule 1, CPC is very clear that issue arises when there is material assertion of fact or law by the one party and denial by the other. Law is fact when there is assertion that a particular law makes the marriage void or voidable due to certain reasons as stated in the written statement and as contended. The question was whether the marriage of Kotamma was void or voidable marriage and that question is really an issue whether the marriage of Kotamma was void or voidable in view of Section 5(iii) of the Hindu Marriage Act. When the question is whether such issue arises or not and whether such position under law is correct or not, the learned Subordinate Judge has gone beyond the scope of law and has fell into error in exercising the jurisdiction. This Court prefers to interfere with the order.

2. The C.R.P. is allowed and the order of the learned Subordinate Judge is set aside only in regard to not framing issue whether the marriage of Kotamma with the plaintiff was hit by Section 5(iii) of the Hindu Marriage Act and this Court proposes to frame the following issues:

(i) Whether Kotamma was a minor on the date of the marriage with the plaintiff?

(ii) If so, whether her marriage is void in view of Section 5(iii) of the Hindu Marriage Act, 1955 ?

These issues shall be added to the other six issues already framed. No costs.