
(2008) 08 AP CK 0054
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3224 of 2008

Sundaragiri Ramulu

APPELLANT

Vs

Sundaragiri Siddi Rajaiah @ Siddi Raju

RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 1, 151

Citation : (2008) 6 ALT 314

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K. Raghuveer Reddy, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner filed O.S. No. 17 of 2007 in the Court of Senior Civil Judge, Jangaon, against his brother, the respondent herein, for the relief of partition and separate possession of the suit schedule property. It was pleaded that, there was a family partition, but the petitioner and respondent have acquired certain items of property, jointly, subsequent to partition, and that the respondent started claiming them as his exclusive properties. The respondent filed counter-affidavit, denying the allegation of the petitioner. The Trial Court framed the issues, and the trial of the suit is about to commence.

2. The petitioner filed I. A. No. 254 of 2008, under Order 18 Rule 1 read with Section 151 C.P.C., with a prayer to direct the respondent to commence his evidence on issue No. 1. He stated that, since it is the respondent, who pleaded that the suit schedule property was already partitioned, the burden is upon him, to prove the same. The petition was opposed by the respondent. The trial Court dismissed the I.A., through its order dated 30-6-2008. Hence, this C.R.P.

3. Sri K. Raghuveer Reddy, learned Counsel for the petitioner, submits that the burden, as regards issue No. 1, squarely rests upon the respondent, and the Trial Court ought to have allowed the I.A.

4. In a suit for partition, the burden squarely rests upon the plaintiff, not only to prove, that the suit schedule property is liable to be partitioned, but also to establish his entitlement for a share, in it. The denial by the defendant, in such a suit, of any plea raised by the plaintiff, would only lead to a necessity, to undertake trial. The mere fact that the defendant had pleaded prior partition of the properties, does not alter the sequence, provided for, under Order 18 C.P.C.

5. The contention of the petitioner, that the respondent must be required to discharge his burden, as regards issue No. 1, is equally untenable. Issues are framed by the Trial Court, based upon the pleadings of the parties. While the burden to prove some issues may rest upon the plaintiff, the one, as regards the others, may be upon the defendant. The evidence in a suit is adduced by the parties, and recorded by the trial Court, in a comprehensive manner, touching all the issues. The evidence that is adduced by a party, would take care, not only of the issues, on which the burden is upon him, but also, those, as regards of which, the burden is, on the other party. Oral or documentary evidence cannot be split, with reference to each issue. Therefore, the application filed by the petitioner was untenable, and the Trial Court had rightly dismissed it.

This Court is not inclined to interfere with the order passed by the Trial Court. The C.R.P. is accordingly dismissed. There shall be no order as to costs.