

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

CIVIL REVISION PETITION No.1700 OF 2023

ORDER:

Heard Mr.B.Charan Kumar, learned counsel representing Mr.P.V.Ramana, learned counsel for the petitioners and Ms.Vani Kandarpa, learned counsel for the respondents 1 to 4. According to the petitioners, respondents 5 to 17 are not necessary parties.

2. Feeling aggrieved and dissatisfied with the order dated 01.08.2019 in O.S.No.58 of 2014 passed by the V Additional District Judge, Kothagudem, the petitioners/defendants 2 to 6, 16 to 18, 20 to 23, 25 to 28 filed the present revision.

3. The respondent Nos.1 to 4/plaintiffs filed a suit vide O.S.No.58 of 2014 for partition and separate possession of the suit schedule property by dividing the same into 5 shares and allotting 4 such shares to them. The trial Court passed preliminary decree on 01.08.2019 for partition and separate possession of the suit schedule property and that all the plaintiffs and the defendants are entitled to 1/5th share each, basing on terms of compromise.

4. Thereafter, the plaintiffs have filed a petition vide I.A.No.1 of 2021 seeking to appoint Advocate Commissioner for partition of suit schedule property into 5 equal shares by metes and bounds with the help of Government Surveyor and to allot four such shares to them by passing final decree, on the following grounds:-

- i. The trial Court passed preliminary decree for partition of the suit schedule property into 5 equal shares and for allotment of each such share to the plaintiffs and remaining 1/5th share to the 1st respondent/1st defendant.
- ii. The 1st defendant is not cooperating for partition of the suit schedule property.
- iii. As there is no appeal to the said preliminary decree, the same is final.

Therefore, he sought for appointment of Advocate-Commissioner for dividing the suit schedule property into 5 equal shares by metes and bounds with the help of Government Surveyor and the Court to allot 4 such shares to them by way of final decree.

5. On the other hand, the defendant No.26 filed counter in the said petition contending as follows:-

- i. Originally the suit was filed before the vacation Civil Judge's Court, at Khammam vide O.S.No.14 of 2014 and thereafter it was transferred to the Principal District Judge's Court at Khammam where it was numbered as O.S.No.58 of 2014. Later in view of formation of the present Court i.e. V Additional District Judge, at Kothagudem, the suit was transferred to the said Court.
- ii. Some of the respondents/defendants engaged Advocate in the Court at Khammam.
- iii. The respondents 2 to 28/defendants 2 to 28 have no knowledge about the date of hearing. They did not receive any notice from the Court in the said suit.
- iv. For non-filing of written statement, the respondents/defendants were set *ex parte* and the aforesaid *ex parte* preliminary decree dated 01.08.2019 was passed. The suit was dismissed against defendants 7, 14 and 15 upon the memo filed by the plaintiffs on 17.04.2017, but the present petition is filed against all the defendants.
- v. Defendant No.2 died after filing of the suit and his legal representatives are not brought on record. But the preliminary

decree was passed against the defendant No.2 also. The present petition is also filed against the dead person/defendant No.2.

- vi. Final decree petition is to be filed under Order 20 Rule 18 of CPC but the said petition is not filed under the said provision.
- vii. The petition is filed for double prayers that is for appointment of Advocate Commissioner and for passing of final decree.
- viii. As per Rule 55 of Civil Rules of Practice, separate petitions are to be filed for each distinct prayer.
- ix. The defendants are residents of Agency area and the defendants 2 to 6 are tribals. Suit cannot be filed against the tribals residing in agency area.
- x. The court does not have jurisdiction to entertain the suit.

Therefore, he sought to dismiss the said petition.

6. Feeling aggrieved by the said preliminary decree dated 01.08.2019, the petitioners herein/defendants herein filed the present revision on the following grounds:-

- i. The suit schedule property is in scheduled area.
- ii. The trial Court without having jurisdiction entertained the suit.
- iii. He has also placed reliance on the judgment of the erstwhile High Court of Andhra Pradesh in **Madakam Venkateswara**

Rao Vs. Subordinate Judge, Kothagudem, Khammam District¹ wherein the High Court declared the Courts constituted under Civil Courts Act, 1972 including the Court at Kothagudem has no jurisdiction and authority to entertain any issue arises from Scheduled Areas and thereby the decree passed is nullity, void and illegal. The same was also upheld by the Apex Court in **Nagarjuna Grameena Bank Vs. Medi Narayana²**

- iv. Entertaining the petition for appointment of Advocate Commissioner for allotment of shares by the trial Court is also equally illegal.

Therefore, he sought to set aside the same.

7. In the aforesaid rival submissions, the issue falls for consideration is whether V Additional District Judge, Kothagudem, is having jurisdiction to entertain and decide the suit filed by the plaintiffs seeking partition and separate possession of the suit schedule property which is situated in Scheduled Area.

8. The suit schedule property to the extent of Ac.69.15 guntas in different survey numbers is situated at Gundepudi Village, Julurpad

¹ 2000 (5) ALD 32

² (2013) 11 SCC 367

Mandal, Bhadradri–Kothagudem District. According to the petitioners, Gundepudi Village, Julurpad Mandal is in Scheduled Area and therefore, learned V Additional District Judge, Kothagudem constituted under Civil Courts Act, 1972 is not having jurisdiction. In fact, the plaintiffs have to approach Agency Court. Instead, the plaintiffs have filed the aforesaid suit and obtained the *ex parte* preliminary decree dated 01.08.2019 by playing fraud on the Courts from V Additional District Judge, Kothagudem.

9. It is not in dispute that suit schedule property is in Gundepudi Village, Julurpad Mandal and it is the Scheduled Area. Tahsildar, Julurpad Mandal also issued certificate vide Rc.No.B/1106/2022, dated 05.11.2022. Learned counsel appearing for respondent Nos. 1 to 4/ plaintiffs fairly admits the said fact that the suit schedule property is in Scheduled Area.

10. It is relevant to note that the AP Civil Courts Act, 1972 (for short, 'the Act') had come into force in the entire State and erstwhile Andhra Pradesh except the Scheduled Areas in the State as per notification vide G.O.Ms.No.1573, dated 30.10.1972 issued by the Hon'ble Government in exercise of its powers under sub Section 3 of

Section 1 of the Act. Thus the Scheduled Areas are exempted from territorial jurisdiction of Civil Courts.

11. Section 1 and 3 of the A.P. Agency Rules, 1924 (for short, 'the Rules') which were extended to District forming part of Telangana by amendment II of 1963, civil jurisdiction was conferred on Agency Courts instead of Civil Courts.

12. The High Court of Andhra Pradesh, vide judgments dated 27.06.2000, 02.08.200 and 25.08.2000 in respective CRPs, declared that the Jurisdiction of the civil courts functioning in the Scheduled Areas from 1972 onwards is illegal and void. Consequently, the judgments, decrees and orders passed by the civil courts in the Scheduled Areas from 1972 onwards were declared null and void and therefore are not enforceable.

13. Hon'ble Supreme Court taking into view the decision of the High-Powered Committee headed by Hon'ble Chief Minister of the State to retain the existing system as obtaining in the Scheduled Areas in complete substitution of the Civil Courts Act, did not chose to interfere with the above legal position and dismissed the appeals

against the said judgments of Hon'ble High Court, in **Nagarjuna Grameena Bank vs. Medi Narayana**³.

14. The Hon'ble Supreme Court also observed in paragraph No.10 of the said judgment that those persons who have decrees, orders or judgments in their favour passed by the civil Courts (in Scheduled Areas) may lay their claim before the Agency Courts. In the event of such claims being laid before the Agency Courts, the same shall be decided by the Agency Courts, uninfluenced by any judgment, decree or orders passed by the civil courts.

15. The said legal principles imply that the Judgments, decrees and orders passed after 1972 by the civil courts in Scheduled areas were null and void, irrespective of whether the litigation is exclusively between the people of Scheduled Areas or between people of Scheduled Area and people of non-Scheduled Area. Hence, Execution Petitions cannot be filed before any forum for execution of the said decrees. The said cases/claims have to be freshly adjudicated by Agency Courts.

16. The judgments, decrees and orders passed prior to 1972, if involved only non-scheduled area people, may not be invalid as held by

³(2013) 11 SCC 362

the erstwhile High Court of Andhra Pradesh in **Saini Lakshmi vs. Bollipalli Janardhan @ Janardhan Chary**⁴. However, the Execution Petitions for even the said orders/decrees are to be filed before respective Agency Courts only.

17. The State of Telangana after creation of new districts in 2016 had notified jurisdiction of Civil Courts corresponding to new districts in 2022, vide various Government Orders. However, in the said G.Os the exemption of territorial jurisdiction of Scheduled Areas from the operation of Civil Courts was not mentioned. Challenging the same, a writ petition vide W.P.No.41597 of 2022 was filed by one Adivasi Sena, which is pending before Division Bench of this Court.

18. It is also relevant to note that the said suit was decreed basing on the compromise. The compromise was between the plaintiffs and Defendant No.1. The Defendants 2 to 8 were set *ex parte*.

19. In the light of the aforesaid facts, the impugned decree dated 01.08.2019 passed in O.S.No.58 of 2014 by V Additional District Judge, Kothagudem, is unenforceable and without jurisdiction. Therefore, the same is liable to be dismissed.

⁴ 2007(2) ALT 33

20. In the result, the Civil Revision Petition is allowed. The order dated 01.08.2019 in O.S.No.58 of 2014 passed by the V Additional District Judge, Kothagudem, is set aside. However, liberty is granted to the plaintiffs to file fresh suit before the Agency Court concerned.

As a sequel, the miscellaneous petitions, if any, pending in the revision shall stand closed.

24rd November, 2023
vvr

K. LAKSHMAN, J