

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Civil Miscellaneous Appeal No.6 of 2015

Dated 21st January, 2015

Between:

K.Suresh Babu

...Appellant

And

K.Srinivasulu and others

...Respondents

Counsel for the appellant: Ms.V.Hima Bindu

Counsel for the respondents: ----

The Court made the following:

JUDGMENT:

This civil miscellaneous appeal arises out of order, dated 17.11.2014, in I.A.No.1130 of 2012 in O.S.No.204 of 2012, on the file of the learned Senior Civil Judge, Kadapa.

I have heard Ms.V.Hima Bindu, learned counsel for the appellant, and perused the record.

Respondent No.1 filed the above-mentioned suit for partition and separate possession of the suit schedule property. He has pleaded that the suit schedule property was purchased by his mother from out of the joint family funds and that therefore he is entitled to a share in the property. In the said suit, respondent No.1 has filed I.A.No.1130 of 2012 for injunction restraining respondent No.2 and the appellant, who are defendant Nos.1 and 2, respectively from alienating the suit schedule property to third parties pending the suit. The appellant has resisted the said application by relying upon the registered Will, dated 27.04.2002, executed by his mother during her life time.

On a detailed consideration of the respective pleas of the parties,

the lower Court has granted injunction by rendering a finding that no *prima facie* evidence was produced by the appellant/defendant No.2 to show that his mother had independent income and that from such income, she has purchased the property under sale deed, dated 26.04.1991.

As the suit is pending before the lower Court, I refrain from rendering a conclusive finding on the issue as to whether the appellant has title on the strength of the registered Will, dated 27.04.2002, executed by his mother. However, as the suit for partition is pending, any alienation of the suit schedule property would result in creating third party interests. Therefore, I am of the opinion that the order of the lower Court granting injunction against the appellant and respondent No.2 from alienating the suit schedule property need not be interfered with.

The civil miscellaneous appeal is accordingly dismissed, however, with the direction to the lower Court to dispose of the suit within six months from the date of receipt of a copy of this order without being influenced by any of the findings rendered by it in the order under appeal.

As a sequel to dismissal of the CMA, C.M.A.M.P.No.9 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

21st January, 2015
VGB