

**(2001) 03 AP CK 0024**

**Andhra Pradesh High Court**

**Case No:** C.R.P. No. 2953 of 2000

Kadityala Bharathi

APPELLANT

Vs

Telukuntla Narsimha and Others

RESPONDENT

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**Date of Decision:** March 30, 2001

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 19 Rule 1, Order 19 Rule 2

**Citation:** (2001) 3 ALT 287 : (2001) 1 AnWR 90 : (2001) 3 CivCC 37

**Hon'ble Judges:** D.S.R. Varma, J

**Bench:** Single Bench

**Advocate:** G. Dhananjai, for the Appellant; G. Suvarna Kumari, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

D.S.R. Varma, J.

This revision is filed against the order dated 24-7-2000 passed by the Court of Senior Civil Judge at Nalgonda in I.A. No. 457/2000 in I.A. No. 432/1991 in O.S. No. 110/1989.

2. The petitioner herein is the respondent No.4 in the suit for partition. The respondent No. 1 herein is the plaintiff in the suit and she filed the suit for partition against his brother and others with regard to certain immovable property mentioned in plaint schedules A and B. A preliminary decree was passed and having come to know about the inclusion of some of the properties belonging to the petitioner in the partition suit, she filed an application in I.A. No. 100/1994 for impleading herself as respondent in I.A. No. 432/1991, which was filed by the respondent No. 1 - plaintiff for passing a final decree.

3. During the course of enquiry in I.A. No. 432/1991, which was filed for passing of the final decree, the petitioner herein was directed to lead evidence by the Court

below and the matter was posted for enquiry. Before starting the evidence, the revision petitioner herein, filed the application under Order 19 Rule 2 C.P.C ., to submit the deponent of the affidavit in I.A. No. 432/1991 for cross-examination to bring the true facts for proper adjudication of the matter in issue before the Court below. When the matter was posted for hearing on 26-6-2000, the present I.A. was filed. The Court below having considered the material on record dismissed the said I.A. Hence the revision.

4. The learned Counsel for the petitioner submits that the respondent No. 1 herein who is the plaintiff in the suit, had no sufficient means to support the other members of the family; that it was admitted in the plaint itself that there were hardly any joint family properties which fetch any income to the members of the family. In the light of the said admissions, it could be impossible to claim to have acquired the suit schedule properties more particularly the item Nos.2, 3 and 4 of B schedule from out of the joint family funds. Therefore, in the light of the said averments made in the plaint itself, the income cannot be treated as joint family property and hence it is necessary for the Court below to permit the petitioner to cross-examine the deponent of the affidavit in I.A. No. 432/1991 (the plaintiff), for making such false allegations.

5. It could be seen from the above facts that the petitioner/respondent No. 4 was not originally a party to the partition suit in O.S. No. 110/1989. The preliminary decree was passed and then only the petitioner came forward with the plea that some of the items of the plaint schedule properties belonging to the petitioner were included in the plaint schedule properties and the averments made in I.A. No. 432/1991 which was filed for passing of the final decree are totally false and baseless. Hence, he sought the permission of the Court to cross-examine the respondent No. 1-plaintiff.

6. The Court below did not accept the contention of the petitioner and rejected the same.

7. In my considered view the order of rejection passed by the lower Court is absolutely right for the following reasons.

8. Firstly the main suit was filed for partition and the preliminary decree was passed and at that stage, the petitioner did not choose to implead herself. Secondly she was not a party to the original suit, and any judgment and decree does not bind the petitioner. Therefore, if the petitioner has any grievance with regard to the partition of the properties or has any claim in respect of any property so partitioned, she could as well file a fresh suit for appropriate relief, inasmuch the judgment and decree does not bind her.

9. Nextly a perusal of the affidavit filed in support of the I.A. before the trial Court does not reveal anything about the claim of the petitioner in respect of any other properties, included in the schedule of properties for partition. The entire affidavit

though runs into more than three pages, does not indicate as to how the petitioner is entitled to claim any of the properties covered by the preliminary decree and how the preliminary decree was collusively obtained by the original parties to the suit. He only repeatedly reiterates in his affidavit before the Court below that the preliminary decree was obtained fraudulently and states that she had no opportunity to cross-examine the 1st respondent-plaintiff. Except this, no material particulars have been stated in the affidavit. It is irresistible for this Court to observe that the averments made in the affidavit filed before the Court below are totally frivolous, baseless and irresponsible. In this connection the lower Court also found that after the impleadment, the petitioner was directed to show the prima facie title to the properties claimed by her, so as to delete such properties from the shares of the parties to the suit. Without complying the said order, the petitioner had filed this I.A. seeking permission to cross-examine the 1st respondent. Further I feel that the apparent intent in filing this kind of affidavit is only to protract the litigation.

10. Further as already noticed, she was not a party to the main suit and she got herself impleaded only at the stage of final hearing. Therefore, heavy burden is cast upon her to prove the allegations made by her. It is rather ridiculous for the petitioner to seek the permission of the Court to cross-examination the plaintiff-1st respondent at the stage of final hearing, without bringing anything on record in support of her averments. Order 19 Rules 1 and 2 cannot be invoked so mechanically as the petitioner herein deems. Order 19 Rule 1 is applicable in normal course only in cases where issues can be decided on the basis of the affidavit and generally not while dealing with interlocutory applications.

11. Further when the final decree petition was filed on the strength of the preliminary decree and a Commissioner was appointed for partition of the properties, and a report was also filed by the Commissioner, showing allotment of shares to the parties and when the Court was about to pass a final decree, confirming the allotment made by the Commissioner, the petitioner had filed the present LA.

12. For the foregoing reasons, I agree with the reasoning given by the Court and I do not find any merits in the revision petition. Accordingly the revision petition is dismissed. No costs.