THE HONOURABLE THE ACTING CHIEF JUSTICE
M.S. RAMACHANDRA RAO
AND

HONOURABLE SRI JUSTICE T. VINOD KUMAR

CIVIL MISCELLANEOUS APPEAL NO.352 OF 2021

JUDGMENT:
(Per Hon'ble the Acting Chief Justice M.S.Ramachandra Rao)

This Appeal is preferred against the order dt.23.07.2021 in I.A.No.640 of 2021 in O.S.No.151 of 2021 of the XV Additional District Judge, Ranga Reddy District at Kukatpally.

2. The appellants are defendants 1 to 4 in the said suit.

Suit O.S.No.151 of 2021

3. The said suit has been filed for partition of the suit schedule properties by the respondent/plaintiff alleging that he is the adopted son of appellants 1 and 2 and that appellants 3 and 4 are the natural children of appellants 1 and 2.

The case of the respondent/plaintiff

4. It is his contention that in 1975, appellants 1 and 2 requested the respondent's natural parents, J. Ramulu and J. Lakshmi, to adopt the respondent, that he was adopted by appellants 1 and 2, and that thereafter appellants 1 and 2 were blessed with two daughters and two sons.

5. The respondent contended that he was continued in the joint family and appellants 1 and 2 looked after his welfare and education and also performed his marriage in 1997; that he graduated in Engineering and started business by joining with appellant No.1 and also helped in

conducting the businesses. He claimed that he was helping the joint family by contributing all his earnings to the family as part of family business. He claimed that he was inducted as a partner in cinema theatres business being run by appellant No.1.

6. He contended that he left for United States of America in 1999 and worked as Software Consultant, that at the time when appellants 1 and 2 used to look after the business, he contributed all his earnings to the family business managed by appellant No.1. He claimed that he returned to India in 2004 on the request of appellant No.1 and other businesses were commenced for metal excavation, crushing and transport.

7. He alleged that appellants 3 and 4 played fraud on him and colluded with appellants 1 and 2 and they did not furnish accounts of the businesses and he even filed a criminal complaint against appellants 3 and 4.

8. He alleged that certain properties had been purchased out of the income from the partnership businesses, which are mentioned in the plaint schedule, but he was not being allowed to enjoy the same and they were denying his legitimate share. He therefore filed the suit for partition by paying Court fee under Section 34(1) of the Telangana Court Fees and Suits Valuation Act.

I.A.No.640 of 2021 in O.S.No.151 of 2021

9. Along with the suit, he filed I.A.No.640 of 2021 under Order XXXIX Rules 1 and 2 CPC for temporary injunction restraining the appellants from alienating the suit schedule properties. He reiterated the contents of the plaint in the said Application.

The stand of the appellants/defendants

10. Counter affidavit was filed by the appellants opposing grant of this interim relief to the respondent.

11. They contended that the suit is bad for non-joinder of two other children of appellants 1 and 2, whose existence is known to the respondent, but who were not impleaded as parties in the suit.

12. It was contended that the mother of the respondent had died when the respondent was aged 6 months, that his natural father intended to remarry, and the spouse of the father of the respondent stated that she will not take the responsibility of the infant child and would only marry the father of the respondent on that condition.

13. As the family of the respondent and the appellants were living together, appellant No.1 undertook the responsibility of bringing up the respondent.

14. They denied that there was any adoption of the respondent by appellants 1 and 2 and contended that he was only fostered.

15. They also denied that there is any ceremony conducted for the adoption and contended that the plea of the respondent that he is adopted son is without any basis.

16. It was denied that the respondent was ever part of the joint family of appellant No.1 and it was contended that merely because he was brought up in the extended family of appellant No.1 along with his brother and his sister, he cannot claim to be the adopted son.

17. It is contended that the relief of partition is sought by the respondent on the premise that he is a member of the joint family and contributed to the acquisition of the properties, but even in such a case, succession had not opened because appellant No.1 was alive and so the respondent was not entitled to any relief during the life time of appellant No.1.

18. It was denied that he contributed to the purchase of suit schedule properties.

19. The other allegations made in the plaint are also denied.

20. It is also stated that there were multi-cases between the family of the respondent and the family of the appellants (12 in numbers) and no basis is indicated in the suit as to on what basis the respondent is claiming $1/5^{th}$ share in all the suit schedule properties 1 to 20.

The events pending the IA o. 640 of 2021 in the Court below

21. Initially *status quo* orders were granted restraining the appellants from alienating the suit schedule properties in the Vacation Court.

The final order dt.23.7.2021 in IA No.640 of 2021

22. By order dt.23.07.2021, the Court below allowed IA No.640 of 2021.

23. It referred to the contention of the respondent that he is adopted son of appellants 1 and 2 and that the adoption took place when he was 6 months old in 1975 and after referring to Exs.P52 to P57, it held that they show that the respondent is the son of appellant No.1. It further observed that the undisputed documents filed on behalf of both the parties reveal that appellant No.1 accepted that he is the father of the respondent and so he cannot say that he is not the father of the respondent. It observed that *these documents would prove the factum of adoption* and that the said adoption had been acted upon during all these years and so appellant No.1 was estopped from saying that he is not the father of the respondent.

24. However, it said that the aspect of adoption could be dealt with in detail by framing separate issue thereon at an appropriate time.

25. It then referred to the contention of the respondent that he had contributed to the joint family by rendering his services and expending all his earnings which were utilized allegedly for the partnership businesses and referred to Exs.P1, P2 partnership deeds, Exs.R4 and R5 licence copies and Exs.P47 and P48 IT Returns and held that these facts

substantiate that the respondent is a partner in the businesses with appellant No.1 and others and that even Exs.P2, P49, P50 and P48 show that he has a share in the four (4) partnership businesses.

26. It observed that if the respondent did not have any nexus with the business establishments and did not have a share therein, the appellants ought to have issued a reply denying the claim of the respondent as a partner.

27. It therefore concluded that it cannot be said that the respondent had not contributed to any of the suit schedule properties and that he had no share in the business properties of the family of the appellants.

28. It held that the question whether appellants 2 to 4 had capabilities to run the businesses on their own would be considered after full trial. But *prima facie* the respondent had a share in the family properties of the appellants and in particular in the suit schedule properties.

29. It referred to Exs.P3 to P28 documents and observed that though all of them are in favour of either all or some of the appellants, since the respondent states that they were purchased from out of the funds and profits derived out of the suit schedule 1 to 4 partnership business properties in which he is said to be a partner, he has *prima facie* case.

30. It observed that if the appellants are permitted to alienate the properties, it would lead to multiplicity of proceedings.

31. It also observed that simply because four partnership businesses are not shown in the suit schedule 1 to 20 properties and the two sisters

are not arrayed as parties in the suit, it cannot, on that ground, dismiss the I.A. since the scope of the I.A. was limited.

32. All defences raised by the appellants, i.e., that the respondent did not have capacity to contribute monies, that the suit was filed only on assumptions, that the share claimed by the respondent is not correctly projected, that appellant No.1 had given financial assistance for the respondent to start travel agency in Basheerbagh, that the properties of the respondent are not being shown in the suit schedule, and that there was no opening of succession for the respondent to claim partition, were not considered by the Court below on the ground that they would be considered at the time of full trial.

The present CMA

33. Assailing the same, this Appeal is filed.

34. Heard Sri V.Srinivas, learned Senior Counsel appearing for Sri G.Vamshi Krishna, learned counsel for the appellants and Sri V.Hari Haran, learned Senior Counsel appearing for Sri Abay Kumar, learned counsel for the respondent.

Consideration by Court

35. No doubt, the respondent had claimed that he is the adopted son of appellants 1 and 2, but *prima facie* evidence of such adoption has not been filed, i.e., a registered adoption deed or at least third party affidavits of the persons who attended the alleged adoption which is said to have occurred in 1975, when admittedly the respondent was aged 6 months only.

36. It is not the case of the respondent that Exs.P52 to P57 indicate that the respondent is the *adopted* son of appellants 1 and 2 though the said documents do show that appellant No.1 is father of the respondent.

37. Obviously to give the respondent, his brother and sister a decent family life without having to fend for themselves after they were abandoned by their natural father, in the above documents, the appellant No.1 allowed his name to be reflected as the father.

38. So, in our view, this material is *prima facie* consistent with the plea of appellant No.1 that he merely brought up (fostered) the respondent and his sister and brother because their mother died at a very early age, and the respondent's father wanted to remarry, and the respondent's father's spouse refused to bring up the respondent and his brother and sister.

39. *Prima facie* it appears that the respondent is only fostered child of appellants 1 and 2 in the absence of any *prima facie* evidence of adoption adduced by the respondent.

40. The alternative plea of the respondent is that he contributed monies for the purchase of the suit schedule properties.

41. A reading of the documents marked by the respondent merely shows that the respondent was a *partner* in some of the business activities along with appellant No.1's family members.

42. From this fact, it does not follow that whatever properties are purchased *in the names of the appellants,* there is a contribution of the respondent as well.

43. This is because for the businesses in which the appellants and the respondent were partners, naturally there would be income realized by the appellants also which could finance such purchases of the suit schedule properties.

44. Also no recital in any sale deed or agreement filed by the respondent is brought to our notice which indicates that the respondent had also contributed any amount for the purchase of the property thereunder.

45. More importantly, the appellants contend that since the suit is one for partition, the respondent ought to have impleaded two other daughters of appellants 1 and 2 and he cannot exclude them from a share, and the suit is bad for non-joinder of necessary parties. In spite of such a plea being specifically raised by the appellants, the Court below erred in not considering it.

46. Also, in a partition suit, all the properties for which partition is sought, have to be included, but four partnership businesses, even according to the Court below, are not shown in the suit schedule. *Prima facie* a suit for partial partition therefore might not be maintainable.

47. If the respondent is a partner along with the appellants in some of the businesses which are being jointly done, at best the respondent can

ask for dissolution of the firms and for accounts, but he is not entitled to claim any share in the properties purchased in the names of the appellants on the pretext that he was a partner along with them in some businesses.

48. It is important to note that appellant No.1 is aged 72 years and appellant No.2 is aged 62 years.

49. The suit has been filed in 2021 and would take considerable time for its disposal and it is possible that by the time suit is decided or the appeals therefrom are decided, appellants 1 and 2 may not even be alive.

50. It is in this context that doctrine of *lis pendens* can be invoked which amply protects the respondent's interest in the event of his success in the suit.

51. We do not agree therefore with the reasoning of the Court below that if the appellants are permitted to alienate the properties, it would lead to multiplicity of proceedings because the interest of the respondent is protected by doctrine of *lis pendens.*

52. Accordingly, the Appeal is allowed; order dt.23.07.2021 in I.A.No.640 of 2021 in O.S.No.151 of 2021 of the XV Additional District Judge, Ranga Reddy District at Kukatpally is set aside, and the said I.A.No.640 of 2021 is dismissed.

53. It is made clear that any alienations made by the appellants pending suit shall abide by the result of the suit.

54. It is further directed that the Court below shall decide the suit uninfluenced by any observations made in its order dt.23.07.2021 in I.A.No.640 of 2021 in O.S.No.151 of 2021 or by the order passed in this Appeal by this Court.

55. Pending miscellaneous petitions, if any, in this Appeal shall stand closed.

____
M.S.RAMACHANDRA RAO, HACJ

____
T. VINOD KUMAR, J

Date: 06-09-2021
Svv