

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CIVIL REVISION PETITION No.1844 OF 2015

Between :-

Antyakula Surya Rao

.. Petitioner

And

Antyakula Naga Raju
And others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 21-07-2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of Judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wish to see
the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Civil Revision Petition No.1844 of 2015

ORDER:-

The petitioner is the 3rd defendant and the 1st respondent is the plaintiff in O.S.No.87 of 2006 on the file of the Senior Civil Judge,

Bobbili. The other respondents are D.1, D.2, D.4, D.5 and D.6.

2. For the sake of convenience, the parties are referred to as they are arrayed in the suit.

3. The plaintiff filed the suit for partition of plaintiff schedule property and allot share of the plaintiff. The same was resisted by the defendants by filing their written statement.

4. Issues were framed and the trial proceeded. On behalf of the plaintiffs, PWs.1 to 4 were examined and Exs.A.1 to A.52 were marked. On behalf of the defendants, D.Ws.1 to 7 were examined and Exs.X.1, X.2 and B.1 to B.28 were marked. After the evidence was closed, arguments on behalf of the plaintiff were heard and when the suit was coming up for the arguments of the defendants, the 3rd defendant filed I.A.No.96 of 2015 praying for receiving the additional written statement.

5. The 3rd defendant filed I.A.No.96 of 2015 for receiving additional written statement contending that in the plaintiff 'B' schedule property a tank is mentioned and that the same is not liable for partition and if the suit is properly valued, the trial Court will have no pecuniary jurisdiction.

6. Originally, the petitioner/D.3 has not filed written statement but only adopted the written statement filed by the other defendant. The 3rd defendant did not even enter the witness box.

7. In support of the application, the 3rd defendant filed an affidavit contending that he has not taken the plea at the time of filing the written statement and hence he may be permitted to file the additional written statement.

8. The plaintiff resisted the application of the petitioner/D.3 contending that the application is filed when the suit is coming up for the arguments of the defendants, that absolutely no grounds are shown for filing the additional written statement at this belated stage and hence the petition is liable to be dismissed.

9. By order, dated 02-03-2015, the learned Senior Civil Judge dismissed the application holding that there are no merits in the petition and that the contention as to whether the 'B' schedule tank is not liable for partition can be waived at the finality of the Judgment and equities can be worked out during the course of passing final decree.

10. Aggrieved by the said order, the petitioner/D.3 filed the present revision. It is the contention of the petitioner that the Court below has erred in dismissing the petition and that therefore the same is liable to be set aside.

11. As already noticed, the suit is for partition simplicitor in between the family members. It is said that one of the items in the suit schedule is a tank which according to the petitioner/D.3 is not capable of partition. It is also the contention that if the properties are properly valued, it ousts the pecuniary jurisdiction of the trial Court. The petitioner/D.3 is said to be a practising Advocate at High Court. He has not filed his written statement originally. He only adopted the written statement filed by his other brother. When the suit is at the stage of arguments, after elaborate trial, during the course of which four witnesses are examined on behalf of the plaintiff and seven witnesses are examined on behalf of the defendants and several documents were marked, the petitioner/D.3 has filed the petition seeking leave of the Court to file additional written statement. In the affidavit filed in support of the application, absolutely no grounds are mentioned as to why the written statement could not be filed before the trial commenced. As noticed above, the suit is of the year 2006. More than after 8 years, the present application is filed. Absolutely, no grounds are made out for accepting the additional written statement at this belated stage. Except for saying that he has not taken the plea at the time of filing written statement, absolutely there is no whisper about the inordinate delay. It is not as though that the proposed pleading is a subsequent development.

12. In **JAYANTHI v. K.L.NARAYANA AND ANOTHER**^[1] this

Court laid down as under:-

“Parliament has inserted the proviso to Rule 17 of Order 6 CPC with an objective of discouraging indiscriminate amendments to pleadings. Though the attempt of the petitioner is to file additional statement, in effect, it amounts to amendment of a written statement which is already on record. What is prohibited by law, if done directly, cannot be permitted to be done indirectly. An additional written statement, which answers the description of further pleading can be filed, mostly, to deal with a specific situation that has taken place after the pleadings in a suit are complete. Strong and acceptable reasons are needed to enable a party to file additional written statement 10 years after the suit was filed, that too when it is sought to be presented in the absence of any amendment to the plaint.”

13. The observations of the High Court are applicable to the facts of the present case. The learned Senior Civil Judge has taken into consideration all the aspects and has dismissed the application. The order does not suffer from any material irregularity or illegality warranting interference. Therefore Civil Revision Petition is therefore liable to be dismissed.

14. In the result, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

July, 2015

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[\[1\]](#) 2013 (4) ALD 273