

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.863 of 2015

ORDER:

This Revision Petition is filed by the petitioner challenging the order 19-01-2015 in I.A.No.116 of 2014 in O.S.No.18 of 2009 of the VI Additional District Judge (F.T.C.), Narsapur.

2. Petitioner herein is 4th defendant in the suit. The 1st respondent herein filed the above suit for partition of the plaint schedule properties, allotment of 1/6th share to him and for delivery of vacant possession thereof apart from past profits and future profits.

3. Written Statement was filed by the petitioner herein-4th defendant on 16-04-2009. Issues were framed on 17-07-2009. Chief Examination affidavit of P.W.1 was filed on 17-10-2011. Instead of cross examining P.W.1, the petitioner herein kept on seeking time and ultimately filed I.A.No.116 of 2014 on 07-10-2014 seeking framing of additional issue *“whether the family arrangement pleaded by 4th defendant in his written statement is true, valid and binding on the plaintiff and other defendants and the suit is not maintainable?”*

4. This application was opposed by the respondents alleging that no family arrangement as

pleaded by the petitioner took place; such an issue is unnecessary; and with an intention to delay and drag on the proceedings, this I.A. was filed.

5. By order dt.19-01-2015, the Court below dismissed the said I.A. on the ground that the petitioner had not been cross examined P.W.1 since 19-10-2011, has been seeking adjournments since then and belatedly this application has been filed five years after filing his written statement. It also observed that it got ample opportunity to frame such issue at any time considering the evidence and issues involved in the matter and that this application was filed only with an intention to delay and drag on the proceedings.

6. Challenging the same, this Revision Petition is filed.

7. Heard Sri Dasari S.V.V.S. Prasad, learned counsel for the petitioner and Sri Challa Srinivasa Reddy, learned counsel for respondent Nos.2 to 4 and Sri Nareshkumar Gundapu, learned counsel for R-1.

8. Learned counsel for the petitioner contended that in the written statement filed by 4th defendant, there is a specific plea of family arrangement and the Court below therefore could have framed the additional issue as sought by the petitioner.

9. Learned counsel for the respondents on the

other hand supported the order passed by the Court below.

10. There is no doubt that a plea of oral family arrangement is raised in the written statement of 4th defendant which was filed on 16-04-2009. Admittedly issues were framed on 17-07-2009 and at that time also no plea was raised by the petitioner to frame an issue regarding the said family arrangement. Affidavit of P.W.1 was filed on 19-10-2011. Petitioner is taking time since then and is avoiding to cross examine P.W.1. No reason is assigned by the petitioner for the delay of five years since his written statement was filed for seeking the framing of this additional issue and for his inaction in not cross examining P.W.1 since 19-10-2011.

11. Therefore, I am of the opinion that the Court below was right in refusing to frame the said additional issue. I am also of the opinion that since the Court has already framed the issue "*whether the plaintiff is entitled to partition of the plaint schedule property into six equal shares and allotment of 1/6th share as prayed for?*", while deciding the said issue, will also consider whatever defence the petitioner raises.

12. I therefore find no merit in the Revision Petition and it is accordingly dismissed. Since the suit is of the year 2009, the Court below is directed to expeditiously dispose of the said suit within four months

from the date of receipt of a copy of this order positively.
The parties on both sides shall cooperate with the disposal of the suit. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-06-2015

kvr