

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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CRP No.3275 of 2015

ORDER :

This civil revision petition is filed against the order dated 29-06-2015 passed in IA No.860 of 2015 in OS No.274 of 2011 by the II Addl. Senior Civil Judge, Nandyal, dismissing the said IA filed by the 2nd defendant-revision petitioner, under Order 6, Rule 17 CPC and under Section 151 CPC for permission to amend the written statement filed by him.

2. Plaintiff-1st respondent herein filed suit for partition and separate possession in respect of plaint schedule properties. Petitioner-2nd defendant and 1st defendant filed separate written statements denying the share of the plaintiff in the suit properties. It is stated that evidence of plaintiff was closed on 24-04-2015 and the suit was posted to 02-06-2015 for the evidence of defendants. That during trial, at the time of plaintiff's evidence, she has not mentioned the names of the members of her late father Kondanna begotten through 1st defendant and for a clarification on that issue, plaintiff was recalled for further cross-examination and it was elicited from her evidence that three more children were begotten by late Kondanna through 1st defendant. Petitioner's case is that after coming to know this fact, he sought to amend the written statement by giving their details, though all the three issues have died.

3. The IA was opposed by the plaintiff, on the ground that the application for amendment was filed after framing of issues and after closing evidence on plaintiff's side. That the proposed amendment is unnecessary as the shares of the deceased three issues already devolved on the living family members, who are parties to the suit. That the amendment petition filed only to protract the litigation and put the plaintiff to embracement and anxiety.

4. Considering the rival contentions, the trial Court dismissed the application observing that IA has been filed after commencement of trial and that the petitioner-2nd defendant has not offered any explanation that in spite of his due diligence, he could not file the application prior to commencement of cross-examination of plaintiff's side evidence, Order 6, Rule 17 CPC prohibits amendment of pleadings, once the trial of the suit is commenced. It was also observed that proposed amendment, even if it is allowed and the details with regard to the three children of 1st defendant begotten through late Kondanna, who are no more, no useful purpose would be served as their shares have already been devolved on other sharers, who are parties to the suit. Aggrieved by the same, this revision petition is filed.

5. Learned counsel for the petitioner strenuously contended that in a suit for partition, all the parties stand on equal footing and the petitioner-2nd defendant was not aware about the details of the deceased children and when the same came to his knowledge after being informed by his counsel, he filed the application and under those circumstances the Court below ought not to have dismissed the IA. It is also stated by the counsel that plaintiff being 5th issue to

late Kondanna and 1st defendant did not state the particulars of the deceased three children in the plaint, the petitioner-2nd defendant sought to include the details of those children, as the shares of all the members have to be worked and eventually the shares of the parties to the suit may vary. Learned counsel further contended that since material facts have been suppressed by the plaintiff, application for amendment ought to have been allowed as it is the obligation of the litigant to disclose all the facts of a case and leave the decision making to the Court.

6. *Per contra*, learned counsel for the plaintiff-1st respondent stated that Order, 16, Rule 17 CPC puts a restriction from entertaining application for amendment of written statement after commencement of trial, unless the Court comes to the conclusion that in spite of due diligence the issue could not be raised before commencement of trial. It is contended that the plaint disclosed the shares of the suit property and all the living family members are parties to the suit, the Court below rightly dismissed the application as no useful purpose would be served by allowing the application.

7. As settled by catena of decisions of this Court and also Apex Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. Primary duty of Court to decide whether such an amendment is necessary to decide the real controversy between the parties. Amendment to pleading should be liberally allowed since procedural obstacles ought not to impede dispensation of justice – Court not to go into correctness or falsity of case in amendment or

merits of amendment sought to be incorporated by way of amendment at stage of allowing prayer for amendment. (See RAJESH KUMAR AGGARWAL vs. KK MODI 2006 (3) ALD 61 (SC))

8. In the instant case, 2nd defendant-revision petitioner's plea is that though three children begotten by late Kondanna and 1st defendant died, and their shares also devolved on the living family members who are parties to the suit, in case of notional partition, the shares of the parties to the suit may vary, even if the plaintiff is entitled for her share. Admittedly, the plaintiff did not mention in the plaint as to the details of the deceased three children. Pleadings should include complete facts. It is not for a litigant to decide what fact is material for adjudication of a case and what is not material. It should leave it to the Court to determine whether or not a particular fact is relevant for arriving at a decision. 2nd defendant's case is that he came to know on being informed by his counsel that it was elicited from the plaintiff's evidence that late Kondanna and 1st defendant had three more children, since deceased and the same has not been stated to by the plaintiff in his plaint and under those circumstances, the 2nd defendant sought to include the details of those deceased persons in his written statement. In effect, the effort of the 2nd defendant was to state complete facts and the proposed amendment is necessary for purpose of bringing to the fore the real question in controversy between the parties. The merits of amendment can be gone into at the time concluding the suit and rendering a decision. As things stand, no prejudice would be caused to either of the parties, if the application for amendment is allowed and the nature of the suit also

remains intact. In the circumstances, the impugned order is set aside and the IA is allowed. Civil revision petition is accordingly allowed. Miscellaneous petitions, if any pending in this case are also allowed. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated:13th October, 2015

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Dated: 13-10-2015

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