

HON'BLE SRI JUSTICE R. KANTHA RAO
Civil Revision Petition Nos.4631 & 4613 of 2015

COMMON ORDER:

Heard Sri V.V.L.N. Sarma, learned counsel appearing for the petitioner/2nd defendant and Sri N.V. Ananthakrishna, learned counsel appearing for respondents 1 to 3/plaintiffs, in both the revision petitions.

2. CRP No.4631 of 2015 is filed against the order dated 30.09.2015 passed in IA No.1152 of 2015 in OS No.167 of 2008, wherein the petition filed by respondents 1 to 3 herein/plaintiffs under Order VI Rule 17 CPC to amend the plaint, was allowed. Whereas, CRP No.4613 of 2015 is filed against the order dated 30.09.2015 passed in IA No.1153 of 2015 in OS No.167 of 2008, wherein the petition filed by respondents 1 to 3 herein/ plaintiffs under Order VII rule 14(4) CPC to condone the delay in filing certain documents, was allowed.

3. Respondents 1 to 3 herein/plaintiffs instituted the suit for partition of the plaint schedule property. In the course of trial before the court below, both parties let in their evidence and the matter was posted for arguments. At that juncture, respondents 1 to 3 herein/ plaintiffs, filed a petition under Order VI Rule 17 CPC to include certain properties to the plaint schedule, which according to them, are also subject matter of the partition. The said petition was opposed by the revision petitioner herein contending that earlier basing on the contentions raised by the defendants about the non-joinder of necessary parties, the plaintiffs filed an amendment petition to bring on record some persons, the same was allowed, again at the stage of arguments, they filed the present petition seeking to add some more properties to the plaint schedule and such a course cannot be

permitted in law.

4. It seems that in the cross-examination of DW.1, it was spoken to by the said witness that under a gift deed, the grand father of the plaintiffs gifted some properties to their grand mother and that their grand father also purchased some more properties with the joint funds in the name of the 2nd defendant. Basing on the said evidence, the plaintiffs filed petition to include those properties also to the plaint schedule contending that those properties are also liable for partition between the parties to the suit.

5. It is true that the amendment petition was filed after commencement of the trial. The contention of the plaintiffs is that due to subsequent events in the suit when they came to know through the evidence of DW.1 that some other properties, which were gifted and also purchased by their grand father, have to be included in the suit schedule and therefore, the same cannot be objected to.

6. Having gone through the submissions made on either side, this court is of the considered view that the proposed amendment does not introduce any new case and that by way of amendment, the plaintiffs wanted to bring certain properties to be added to the plaint schedule. Whether those properties are liable for partition or not is the question to be determined by the trial court after considering the evidence adduced on either side. Further, the proposed amendment enables the court to give effective and complete adjudication upon the issue involved in the suit and also to avoid multiplicity of the litigation.

The learned court below also observed that there was no tenable objection in the counter filed by the respondent therein to condone the delay in filing the petition to receive certain documents. Therefore, in the considered view of this court, the trial court rightly allowed both the petitions, which require no interference by this court in the present revision petitions.

7. Consequently, both the civil revision petitions are dismissed.
There shall be no order as to costs. Miscellaneous petitions, pending if
any in these civil revision petitions, shall stand closed.

R. KANTHA RAO, J

Date: 30.12.2015
BSS

HON'BLE SRI JUSTICE R. KANTHA RAO

69

Civil Revision Petition Nos.4631 & 4613 of 2015

-
-
-
-
-
-
-
-
-
-
-

Date: 30.12.2015

BSS