

HON'BLE SRI JUSTICE R.KANTHA RAO
C.R.P.No.5098 of 2015

ORDER

Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondents.

The petitioner is the plaintiff. He filed O.S.No.82 of 2002 for partition of joint family property and claiming share of adopted son of the first defendant. The second respondent-defendant is the wife of the first defendant. Another suit i.e., O.S.No.20 of 2002 was filed for specific performance of agreement of sale of plaint B schedule properties by the petitioner's natural father. Both the matters were clubbed together by the trial Court and the trial was completed and arguments were heard in part. At that time, the first defendant died. According to the revision petitioner/plaintiff, in view of death of the first defendant, he is entitled to $\frac{3}{4}$ share in the property and therefore, it became necessary to seek amendment to the plaint by claiming $\frac{3}{4}$ share in the schedule property.

The trial Court dismissed the petition on the ground that unless the petitioner establishes that he is the adopted son, he cannot seek such an amendment. Aggrieved thereby, the petitioner filed the

present revision.

While seeking amendment, the parties are not required to establish their respective contentions. The Court has to see as to whether the application seeking amendment under Order 6 Rule 17 CPC is maintainable or not?

In the instant case, the amendment became necessary consequent on the death of the first defendant. Therefore, it cannot be said that there is any delay on the part of the petitioner in seeking amendment of the plaint by claiming $\frac{3}{4}$ th share in the suit schedule property. The trial Court ought to have allowed the petition.

Having regard to the facts and circumstances of the case, the order dated 17.11.2015 passed in I.A.No.873 of 2015 in O.S.No.82 of 2002 is set aside and the Civil Revision Petition is allowed accordingly. No costs.

JUSTICE R.KANTHA RAO

18th December, 2015
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