

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

C.R.P.No.3435 of 2010

ORDER:

This Revision Petition is filed challenging the Order dt.22-07-2010 in I.A.No.372 of 2010 in O.S.No.272 of 2005 of the II Additional Senior Civil Judge, Nellore.

2. Petitioner herein is 1st defendant in the above suit. The said suit was initially filed before the Senior Civil Judge, Kovur, Nellore District as O.S.No.28 of 2003 against the petitioner and respondent Nos.2 and 3 for declaration of the right of the plaintiff's share to the extent of Ac.1.93 cts out of plaint 'A' schedule property as per the family arrangement dt.11-07-1993, to direct the petitioner and the 2nd respondent to deliver possession of the same to 1st respondent after dividing the same by metes and bounds within the time specified by the Court and also to direct the petitioner and 2nd respondent to pay Rs.35,185/- towards damages with subsequent interest at 12 ½% p.a. thereon from date of suit till the date of realization.

3. The suit was later transferred to the II Additional Senior Civil Judge, Nellore and renumbered as O.S.No.272 of 2005. After it was transferred, 1st

respondent filed I.A.No.401 of 2008 to include another item of property. The said application was allowed on payment of costs.

4. The 1st respondent challenged the same by way of C.R.P.No.5403 of 2008 before this Court and the said Revision Petition was allowed on 05-10-2009 on the ground that it is vague and 1st respondent was given liberty to file a fresh application seeking amendment of the plaint.

5. Thereafter, 1st respondent filed I.A.No.372 of 2010 before the Court below stating that he had come to know about the existence of an extent of Ac.3.15 cts in Sy. No.136 of Kandulur village; that he did not include it in the original plaint on account of ignorance; and he has been advised to amend the plaint by including it in the plaint schedule.

6. This application was opposed by the petitioner and 2nd respondent contending that the trial had already commenced and after commencement of the trial, application for amendment of the plaint cannot be permitted.

7. By order dt.22-07-2010, the Court below allowed the said application. It held that the said property mentioned in the application for amendment had not been

shown in the plaint schedule and 1st respondent has right to claim the said property also and therefore, the application for amendment is liable to be allowed subject to payment of Court Fee of Rs.2,026/-.

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

9. Sri A.Satyanarayana, learned counsel appearing for Smt.Ch.Lakshmi Chaya, learned counsel for the petitioner, contended that the order passed by the Court below is not valid; 1st respondent was fully aware that the property at Kandulur village is also family property; on the basis of family arrangement dt.15-02-1980, 1st respondent is claiming a share in this item; that 1st respondent is a party to the said document and therefore, the plea of 1st respondent is not *bona fide*.

10. Learned counsel for 1st respondent on the other hand supported the order passed by the Court below and contended that the Court below was correct in accepting the plea of 1st respondent and permitting amendment of the plaint to include a claim in respect of the land in Kandulur village also. He pointed out that since 1st respondent was not aware about this property previously, he had filed the application for amendment of the plaint. He further contended that when a fresh suit

claiming a share in the said item is not barred under any law, to avoid multiplicity of proceedings, the application for amendment of plaint can be allowed.

11. I have noted the submissions of both sides.

12. It is the case of the 1st respondent that he was not aware of the existence of the said property in which he has a share, at the time of filing of the suit, that he came to know about it only subsequently, that was why he has filed the application for amendment, and this establishes his due diligence in not seeking amendment of the plaint before the trial has commenced. In the proposed amendment now sought, no doubt reference to a family arrangement dt.15-02-1980 to which 1st respondent is a party is made and it is stated that this document was produced by 3rd defendant during cross examination of 1st defendant as D.W.1 in O.S.No.117 of 2001.

13. Although the learned counsel for the petitioner sought to contend that it is on the basis of this document that 1st respondent had made a claim for amendment, and he is aware of it since he is a party to it, I am of the opinion that it is a matter for enquiry in evidence as to whether the land in Kandulur village was subject matter of the said document and as to whether the said document was

binding on 1st respondent. At the stage of considering whether or not amendment of a pleading should be allowed, the Court cannot go into the correctness of the plea raised in the amendment application.

14. I am of the opinion that the Court below has correctly exercised its discretion and allowed the application for amendment of the plaint considering the fact that prayer in the suit is in effect the prayer for partition, and also taking into account the plea that 1st respondent/plaintiff was not aware of the existence of the land in Kandulur in which he also has a share, at the time suit was filed. Therefore, I am of the opinion that no interference is warranted with the order passed by the Court below.

15. I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-06-2015

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