

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.4907 of 2010

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ORDER:

Heard Sri Meka Rajasekhara Reddy, learned counsel for the petitioner and Sri Nimmagadda Satyanarayana, learned counsel for respondent Nos.2 to 5 and Sri Narra Nageswara Rao, learned counsel for respondent Nos.6 to 8.

2. This Revision petition is filed under Article 227 of the Constitution of India challenging the order dated 31.08.2010 in I.A.No.694 of 2010 in O.S.No.299 of 2007 of the II Additional Senior Civil Judge, Vijayawada, insofar as the said Court while allowing an application under Order IX Rule 7 of the C.P.C. filed by the petitioner gave a finding that the petitioner is not entitled to claim that his alias name is 'China Venkat Ramudu'.

3. The petitioner is the 1st defendant in the above suit filed by the deceased 1st respondent for partition. He was set ex parte on 10.04.2007. Therefore, he filed I.A.No.694 of 2010 to set aside the order passed on 10.04.2007 setting him ex parte. He contended that the plaintiff, who is his brother, wrongly described his brothers including the petitioner herein; that the petitioner's name is found in the description of the 3rd defendant as well and so he engaged a counsel as the 3rd defendant; thereafter the other brothers filed application on the instigation of the plaintiff to set aside the ex parte order; that he also filed I.A.No.927 of 2009 raising his objection; but the Court below had passed order showing the petitioner as the 1st defendant. So, he was constrained to file this application seeking to set aside the ex parte order since the 1st defendant was made ex parte on 10.04.2003. He contended that he had already filed written statement as D.3 and the same may be treated as D.1's written statement also. In his application he had also contended that his name was 'China Venkat Ramudu' and he is also known as 'Peda

Venkanna', which fact was disputed by the respondents. They also opposed the application filed by the petitioner to set aside the ex parte order dated 10.04.2007 passed against him. While allowing I.A.No.694 of 2010 and setting aside the order dated 10.04.2007 passed against the petitioner, the Court below however observed that the petitioner is not entitled to claim his alias name as China Venkat Ramudu.

4. The learned counsel for the petitioner would contend that the question whether the petitioner is also known as 'China Venkat Ramudu' is a matter to be gone into in the suit after framing an issue to that effect and while considering the application under Order IX Rule 7 of the C.P.C. filed by the petitioner, the Court below ought not to have given any finding in that regard.

5. The learned counsel for respondent Nos.2 to 5 contended that the order of the Court below is correct and the petitioner is not entitled to claim that he is also known as 'China Venkat Ramudu'.

6. The application I.A.No.694 of 2010 which was decided by the Court below was an application under Order IX Rule 7 of the C.P.C. filed by the petitioner herein to set aside the order dated 10.04.2007 setting him ex parte in the suit. The scope of this I.A. is limited for considering whether sufficient cause was shown by the petitioner to recall the same and to permit him to file written statement in the suit. In this view of the matter, while deciding the said application, it is not open to the Court below to go into question whether the petitioner had any alias by name China Venkat Ramudu. After the petitioner files his written statement as D.1 and if the plaintiff and the other defendants dispute the contents of the written statement filed by him with regard to his alias name, the Court below can frame an issue as to whether the petitioner can claim that he has any alias name of 'China Venkat Ramudu' and then decide it in the suit. Therefore, the order of the Court below insofar as it held that the petitioner is not entitled to claim that his name as 'China Venkat Ramudu' cannot be sustained and is set aside. The rest of the order stands confirmed.

7. Accordingly, the civil revision petition is allowed to the above extent. No costs.

8. Miscellaneous Petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

3rd June 2015

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