

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.No.4270 & 4315 of 2012

Between:

Lingam Venkateswara Rao

.....Petitioners

and

Lingam Naga Venkata Lakshmi Veeranjanyamma and others

.....Respondents

Date of Judgment pronounced : 14-08-2015

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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

C.R.P.No.4270 & 4315 of 2012

COMMON ORDER:

These two Revision Petitions arise out of the same

suit between the same parties, therefore they are being disposed of by this common order.

2. Petitioners in both the Revisions are defendant Nos.1 to 4 in the suit.

3. The respondent Nos.1 and 2/plaintiffs filed the suit for partition of the plaint schedule properties. After trial commenced, they filed I.A.No.768 of 2010 seeking amendment of the plaint to include certain other properties in the plaint schedule alleging that they also were not aware that these properties are also ancestral properties of 1st petitioner. They filed I.A.No.1309 of 2009 under Order 1 Rule 10 CPC alleging that the petitioners had, after filing of the suit alienated Ac.0.10 cts in R.S.No.905/1 to the respondent Nos.7 to 9 in C.R.P.No.4315 of 2012, and therefore, they should be impleaded as parties in the suit.

4. These two applications were opposed by the petitioners who contended that even according to the respondent Nos.1 and 2, they are not in possession and enjoyment of the properties proposed to be included in the plaint schedule. Therefore, proper valuation certificate in respect of the said properties has to be filed, advelorem Court Fee needs to be paid and the value of the said property shall also be included in the suit claim. It is further contended that the cause of action would also change. They even raised the plea that the properties

sought to be included are not joint family properties and they had been sold away to third parties long prior to the marriage of 1st respondent with the son of 1st petitioner. They also contended that the application under Order 1 rule 10 CPC to implead the purchasers is not maintainable since the subject properties had been alienated even prior to the suit.

5. By separate orders dt.09-02-2012, both the applications are allowed by the Court below. It held that respondent Nos.1 and 2 should be provided an opportunity to prosecute the suit for partition by showing all the properties and since they have pleaded that certain properties were not included originally in the plaint on account of lack of knowledge, I.A.No.768 of 2010 is to be allowed. I.A.No.1309 of 2009 was also allowed stating that the presence of proposed parties would be necessary for working out equities, if it is shown that respondent Nos.1 and 2 are entitled to partition of the said properties also.

6. Challenging the same, both these Revision Petitions are filed.

7. Heard Sri Gangadhar Chamarty, learned counsel for the petitioners, Sri Gudapati Venkateswara Rao, learned counsel for respondent Nos.1 and 2 and Sri S.Ramachandra Prasad, learned counsel for respondent

Nos.7 to 9 in C.R.P.No.4315 of 2012.

8. In the present case, admittedly the suit had been filed prior to the amendment to the Code of Civil Procedure, 1908 by the Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002) which came into effect from 01-07-2002. Therefore, even though the trial has commenced, the proviso to Order VI Rule 17 CPC would not come in the way of the amendment of the plaint sought by respondent Nos.1 and 2. Of course it has to be proved during the trial whether the properties now sought to be included in the plaint schedule are ancestral/joint family properties of 1st petitioner or not. Since the respondent Nos.1 and 2 have pleaded that they were not aware that the properties now sought to be included in the plaint schedule are joint family properties at the time when they filed the suit, I am of the opinion that the Court below was right in permitting amendment of the plaint and allowing the respondent Nos.1 and 2 to add them in the plaint schedule. Therefore, C.R.P.No.4270 of 2012 is liable to be dismissed.

9. Coming to C.R.P.No.4315 of 2012, it is specific case of the respondent Nos.1 and 2 that the petitioners, after filing of the suit, had alienated Ac.0.10 cts in R.S.No.905 of 2011. Respondent Nos.7 and 8 also executed a sale deed in favour of 9th respondent. Since the land in R.S.No.905/1 has now been included in the

plaint schedule by virtue of the order passed in C.R.P.No.4270 of 2012, it would be necessary that respondent Nos.7 to 9 also be on record so that equities can be worked out, if the trial Court ultimately comes to the conclusion that the respondent Nos.1 and 2 are also entitled to the partition of the said property. Therefore, I do not find any merit in this Revision Petition and it is also liable to be dismissed.

10. Accordingly, both the Civil Revision Petitions are dismissed. However, it is made clear that respondent Nos.1 and 2 shall correctly indicate the valuation of the properties which are now included in the plaint schedule and pay Court Fee thereon as per the provisions of APCF and SV Act, 1956. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-08-2015

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