

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

CIVIL REVISION PETITION No.2963 of 2015

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ORDER:

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This Civil Revision Petition is filed challenging the order dt.01-04-2015 in I.A.No.147 of 2015 in O.S.No.25 of 2007 of the I Additional Junior Civil Judge, Tirupati.

2. The petitioners herein are plaintiffs in the suit. They filed the suit for recovery of rents against respondent and for costs claiming that the property belonged to one P.Durvasulu Reddy and the 1st petitioner is his lawfully wedded wife and petitioner Nos.2 and 3 are his children.

3. Written statement was filed by respondent opposing the suit claim, in which a plea was raised that defendant/respondent is also the wife of late P.Durvasulu Reddy and that she had filed a suit O.S.No.212 of 2009 before the I Additional Junior Civil Judge, Chittoor for declaration of her status.

4. The petitioners then filed I.A.No.147 of 2015 to amend the plaint seeking to add the following reliefs:

(a) Declare the legal character of 1st petitioner

that she is the legally wedded wife of late P.Durvasulu Reddy;

(b) Declare that the petitioners are absolute owners of the plaint schedule property having got right, title, possession and enjoyment over the same; and

(c) Consequently directing the respondent to deliver possession of the plaint schedule property to the petitioners and if she fails to do so, the same to be done through process of law.

5. Counter affidavit was filed by respondent opposing this application. She contended that it will change the character and cause of action in the suit and if the petitioner is intending to get a decision on the marital status, she must file a petition under Section 7 of the Family Courts Act, 1984 before the concerned Family Court. It was pointed out that petitioner cannot seek declaration of title to the plaint schedule property since she had filed no document to prove her ownership of the said property. She also contended that the documents filed by respondent show that she is in possession of the suit schedule property since 02-07-1993 and as lawful owner since

13-09-2001 and that the plaint schedule property had been gifted to her by P.Durvasulu Reddy and a Will was also been executed bequeathing this property to the

daughter of respondent.

6. By order dt.01-04-2015, the Court below dismissed the said application. It held that the amendment sought by petitioners would change the nature of suit itself from one where recovery of rents are sought to another where the status of 1st petitioner as the wife of late P.Durvasulu Reddy and title to the property has to be gone into. It also held that the petitioner had not filed any document to prove her ownership of the plaint schedule property and she also had to seek cancellation of the Will dt.02-07-1993 and settlement deed

dt.02-06-2006 executed by P.Durvasulu Reddy. It held that this causes prejudice to the respondent.

7. Challenging the same, this Revision is filed.

8. Although the learned counsel for petitioners Sri P.Hemachandra sought to contend that the order passed by the Court below is erroneous, I am of the opinion that the conclusion of the Court below that allowing of amendments would alter the nature of the suit and would cause prejudice to respondent, are sustainable. In any event the respondent had filed O.S.No.212 of 2009 on the file of I Additional Junior Civil Judge, Chittoor for declaration of her status as the wife of the deceased P.Durvasulu Reddy and also her title to the said property.

9. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

10. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 04-09-2015

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