

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

**CIVIL REVISION PETITION No.1058 of 2015**

**ORDER:**

This Civil Revision Petition is filed challenging the order

dt.06-02-2015 in I.A.No.851 of 2014 in O.S.No.37 of 2009 passed by the IV Additional District Judge, Kadapa.

2. Petitioners herein are defendants in the said suit. The said suit was filed by 1<sup>st</sup> respondent herein against petitioners for partition of the plaint schedule properties into 2 equal shares and for allotment of one such share to her; for a perpetual injunction restraining the 1<sup>st</sup> petitioner from alienating the plaint schedule property to others; and to restrain the other defendants from interfering with the joint possession and enjoyment of the plaint schedule property.

3. The 1<sup>st</sup> respondent has 3 other sisters, who appear to have been married prior to 1980. Therefore the 1<sup>st</sup> respondent took a plea in the plaint that the other 2 sisters do not have any share in the joint family property in view of Andhra Pradesh amendment to the Hindu Succession Act introduced w.e.f. 05-09-1985 vide Section 29-A and therefore they need not be parties to the suit, and the suit against them would not lie.

4. The first respondent also filed an affidavit in lieu of chief-examination as P.W.1 reiterating the said fact.

5. Thereafter the 1<sup>st</sup> respondent/plaintiff filed an application in I.A.No.851 of 2014 under Order I Rule 10 CPC stating that her other 3 sisters also would have a share in the property and that the 1<sup>st</sup> petitioner/1<sup>st</sup> defendant had recently executed an unregistered gift settlement deed in their names in order to cause injury to her. She further contended that these 3 sisters should also be impleaded as parties in the suit.

6. Counter affidavit is filed by 1<sup>st</sup> petitioner/1<sup>st</sup> defendant opposing this application contending that plaintiff, having claimed in the plaint that the other sisters had no right in the properties, cannot now be permitted to implead them. He also denied the execution of unregistered gift settlement deed in favour of other 3 sisters.

7. By order dt.06-02-2015, the Court below allowed the said application. It held that notwithstanding the pleading taken in the plaint by plaintiff that her sisters are not entitled to share in the property, since she now taking a plea that an unregistered gift settlement deed was executed by 1<sup>st</sup> petitioner/1<sup>st</sup> defendant, they should be added as parties and that at this stage it is not possible to decide the merits and demerits of the case. It held that in

order give an opportunity to plaintiff, the proposed parties can be added as defendant Nos.6 to 8 and no prejudice will be caused to 1<sup>st</sup> defendant if that is done.

8. Questioning the same, this Civil Revision Petition is filed.

9. The learned counsel for petitioners contends that the Court below acted perversely in allowing this application and that in view of the pleading of the plaintiff that the other sisters are not necessary and proper parties, this application ought not to have been allowed. He further contended that the stand of plaintiff that there is an unregistered gift settlement deed by 1<sup>st</sup> defendant cannot be accepted because no such settlement deed was produced by 1<sup>st</sup> defendant and its existence was denied by 1<sup>st</sup> defendant.

10. The learned counsel for 1<sup>st</sup> respondent/1<sup>st</sup> plaintiff however contended that even assuming for the sake of argument that there is no such unregistered gift settlement deed, the pleading of plaintiff in the plaint was based on Section 29-A introduced by the A.P. amendment Act which came into force in 1985, but the provision was superceded by the Central Amendment to Hindu Succession Act, 2005 amending Section 6 of the Act; and now irrespective of the dates of marriages of sisters of plaintiffs, they would be entitled to a share in the

joint family properties. He also pointed out that no prejudice would be caused to 1<sup>st</sup> defendant if the other sisters are brought on record and if such sisters are not inclined to take a share in the property, they may not participate in the suit at all.

11. I have noted the submissions of both sides.

12. No doubt in the plaint as well as in the affidavit in lieu of chief-examination the plaintiff, relying on Section 29-A of the Hindu Succession Act introduced by the A.P. State Legislature w.e.f.

05-09-1985, had taken a plea that the married sisters are not entitled to a share. But there is no dispute that the subsequent Central Amendment of 2005 has nullified the effect of A.P. Amendment. Therefore, irrespective of the date of marriage of sisters of

1<sup>st</sup> defendant, they would be entitled to a share in the joint family property. Therefore, even if the unregistered gift settlement deed pleaded by plaintiff is not true, by virtue of Central Amendment to the Hindu Succession Act in the year 2005, the other sisters of plaintiff and 1<sup>st</sup> defendant would get a share in the joint family properties. Of course, the question whether the plaint schedule property is joint family property or not would be decided in the suit and this Court is not expressing any opinion on the said issue.

13. In this view of the matter, I am of the opinion that the Court below did not make any error in impleading

the three sisters of plaintiff and 1<sup>st</sup> defendant, and that there is no error of jurisdiction in the impugned order warranting interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

14. Therefore, for the aforesaid reasons, the Civil Revision Petition fails and it is accordingly dismissed at the stage of admission. No costs.

15. As a sequel, all miscellaneous petitions, if any pending, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 26-03-2015

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