

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2476 of 2014

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.23.07.2014 in I.A.No.229 of 2012 in O.S.No.39 of 2001 on the file of Senior Civil Judge, Tanuku.

2. The petitioner herein is the 4th defendant in the above suit.

3. The 1st respondent/plaintiff filed the said suit against the petitioner and respondent nos.2 to 4 for specific performance of an agreement of sale allegedly executed on 15.03.1997 by the father of petitioner.

4. Written statement was filed opposing the suit claim.

5. Trial concluded and the matter was posted for arguments.

6. At that stage, the 1st respondent herein filed I.A.No.229 of 2012 seeking amendment of the plaint stating that in the plaint it had mentioned that the suit schedule property is the absolute property of the father of Late Tadimeti Suryanarayana Bose having been acquired by him from his mother, but the truth of the matter is that

only item No.1 was bequeathed to him by his mother under a Will; and item No.2 of the suit schedule property was his self-acquired property having been allotted to him in a partition. It is stated that these facts were not mentioned in the plaint due to mistake and it was only noticed when counsel was preparing for arguments.

7. This application was opposed by petitioner contending that at the stage of arguments and after completion of evidence of both parties, application to amend the plaint under Order 6 Rule 17 C.P.C., is not maintainable. It was also pointed out that the 1st respondent as PW.1 gave evidence in the manner stated originally in the plaint only and nowhere did she say that item No.2 was got by petitioner's father in a partition.

8. By order dt.23.07.2014, the Court below allowed the said application. It observed that the plaintiff wanted to explain the manner in which her vendor Late Tadimeti Suryanarayana Bose got item nos.1 and 2 of the plaint schedule property; in case the plaintiff succeeded in proving the manner in which her vendor got the suit schedule property as sought for in the amendment, it has to be taken to be the absolute property of her vendor; and if the amendment is allowed, neither the nature of the suit; or the relief sought for will be changed, and it would not amount to introducing new facts in the plaint. It also held that the proviso to Order 6 Rule 17 C.P.C. would not

apply, since the suit relates to the year 2001.

9. Challenging the same, the present Revision is filed.

10. Heard Sri Sai Gangadhar Chamarty, counsel for petitioner; and Sri K. Chidambaram, counsel for 1st respondent.

11. The counsel for petitioner contended that the application seeking amendment was filed belatedly at the stage of arguments and ought not to have been entertained by the Court below, particularly when the facts sought to be introduced by way of amendment have no relevance to the suit claim.

12. On the other hand, the counsel for 1st respondent supported the order passed by the Court below.

13. Admittedly, the suit O.S.No.39 of 2001 was filed seeking specific performance of an agreement of sale executed in favour of 1st respondent allegedly on 15.03.1997 by Late Tadimeti Suryanarayana Bose, who is the father of petitioner and respondent nos.3 and 4, and husband of 2nd respondent. Therefore, the question in the suit would be whether such an agreement of sale was executed by the father of petitioner; and whether there was readiness and willingness on the part of 1st respondent to obtain a sale deed. The question how the

father of petitioner obtained the property is totally irrelevant, and is unnecessary to be gone into in the suit.

Since the pleading of 1st respondent is said to be only to clarify how the father of petitioner obtained the property, and the said issue is extraneous to the suit in question, I am of the opinion that the Court below is not correct in allowing the amendment at the stage when the matter is posted for hearing of arguments. It may be that the proviso to Order 6 Rule 17 C.P.C. is inapplicable. But considering the delay of eleven (11) years in seeking amendment of the plaint, the Court below ought not to have exercised discretion in favour of 1st respondent and allowing the amendment.

14. In this view of the matter, the order dt.23.07.2014 in I.A.No.229 of 2012 in O.S.No.39 of 2001 on the file of Senior Civil Judge, Tanuku is set aside. The Civil Revision Petition is allowed. No order as to costs.

15. As a sequel, miscellaneous applications pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25.08.2015

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