

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.1744 of 2015

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ORDER:

This revision is preferred against order dated 17.04.2015 in I.A.No.1592 of 2014 in I.A.No.992 of 2014 in O.S.No.12 of 2013 on the file of V Additional District Judge, Medak at Sangareddy.

2. Brief facts leading to this revision are as follows:

Revision petitioner herein filed I.A.No.992 of 2014 invoking Order 1 Rule 10 CPC to implead him as defendant No.3 in the main suit, contending that he is performing pooja in the house of late Sripathi Rao Naik and that they were allowed to stay in the house i.e., Item No.4 of the suit schedule property and that they came to know about the suit filed by the plaintiffs including this property and that their presence is necessary for deciding the issues in the suit as they are in possession of one of the item of the suit schedule property, for which, partition is prayed for. This application was opposed by the plaintiffs in the trial Court and on a consideration of material on record the trial Court dismissed the application holding that there is no documentary evidence in support of the claim of the revision petitioner and presence of petitioner to decide the suit is not necessary. Revision petitioner herein filed I.A.No.1592 of 2014 to condone delay of 6 days in filing review petition for reviewing the order dated 11.09.2014 in I.A.No.992 of 2014 and that application was also dismissed holding that revision petitioner failed to explain each days delay and that there are no convincing grounds for condoning delay. Now the said order is assailed before this Court in this revision.

3. Heard both sides.

4 . Advocate for revision petitioner submitted that petitioner is in possession of item No.4 of the suit schedule property for more than two

generations without any interruption and suppressing the same, the suit is filed, therefore, his presence is necessary for determination of the issues, but the trial Court erroneously dismissed the application and when application is filed for reviewing order with delay condonation petition, no opportunity was given to review petitioner and no prejudice will be caused to the plaintiffs if the revision petitioner is impleaded as defendant No.3.

5. On the other hand, advocate for plaintiffs submitted that presence of revision petitioner is not necessary when the suit is for partition of joint family property and the revision petitioner is only in permissive possession and he cannot claim any rights over the schedule property and the trial Court rightly dismissed the application and that there are no grounds to interfere with the order of the trial Court.

6. Now the point that would arise for my consideration is :

“Whether the order of trial Court is legal, correct and proper?”

POINT:

7 . Admittedly, revision petitioner is in permissive possession of the house property i.e., item No.4 of the suit schedule property. Suit is filed for partition of suit schedule property including the house property and the suit is only at the stage of trial. Only after passing preliminary decree, the question of division would arise at the time of final decree proceedings.

8. It is not known what will happen to the relief of partition and even if decree is granted to whose share this property will be allotted in the partition. Decree holder to whom this item is allotted has to take necessary steps for eviction of revision petitioner, and in that way, no prejudice would be caused to the rights of review petitioner. As rightly pointed out by advocate for plaintiffs, his presence is not at all necessary for considering the relief of partition or in determining the shares of the plaintiffs and defendants and the trial Court can examine the equities at the time of passing of final decree.

9. For these reasons, I am of the view that there are absolutely no grounds to interfere with the findings of the trial Court and that revision is devoid of merits.

10. Accordingly, this Civil Revision Petition is dismissed. No costs.
Miscellaneous Petitions, if any pending, in this petition, shall stand closed.

S. RAVI KUMAR, J

Date: 31-07-2015.

gvl