

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

CIVIL REVISION PETITION No.1246 OF 2015

ORDER:

This Revision is filed challenging the order dated 09.02.2015 in I.A.No.2019 of 2014 in O.S.No.33 of 2007 on the file of the Principal District Judge, Kadapa.

The petitioners herein are defendants 1 and 2 in the suit. The suit was originally filed by one Chenna Vijaya Lakshmi, the mother of the petitioners and the respondent, for partition of the plaint schedule property and for allotment of one such share to her. The petitioners herein are the sons and the respondent is the daughter of the said Vijaya Lakshmi.

While the petitioners filed a written statement contesting the suit and prayed that the suit be dismissed with costs, the respondent filed a written statement-cum-counter claim supporting the claim of the plaintiff and sought relief of partition in respect of the plaint schedule properties and also sought division thereof into four equal shares and for allotment of one such share to her.

Subsequently, on 13.10.2013, the plaintiff filed a memo not pressing the suit on the ground that she is suffering from ill health. The respondent herein opposed the said relief claimed by her mother contending that she had filed a counter claim and therefore the suit cannot be dismissed.

In the meantime, the sole plaintiff died on 03.03.2014 and a memo was filed by her counsel to that effect.

Thereafter, an order was passed in S.R.No.13701/13-11-2013 & S.R.No.4527/21-03-2014 in the said suit by the Court below stating that since the petitioners and the respondent are the legal representatives of the deceased plaintiff and since the respondent supports the claim of the plaintiff in the written statement-cum-counter claim filed by her, the respondent ought to be transposed as plaintiff No.2 in the suit for the purpose of continuation of the suit (in view of the counter claim filed by the respondent supporting the plaintiff) and that the respondent would thereafter be treated as the plaintiff. Subsequently, the respondent was transposed as plaintiff No.2.

She then filed I.A.No.2019 of 2014 in the suit under Order VI Rule 17 C.P.C. to amend the plaint to the effect that the respondent would be entitled to 1/3rd share on the death of her mother. She filed I.A.No.1636 of 2014 seeking amendment of written statement-cum-counter claim filed by her prior to her transposition as the plaintiff.

Both these petitions were opposed by the petitioners contending that they were not maintainable and were liable to be dismissed.

By common order dated 09.02.2015, the Court below allowed both the applications. It held that once the respondent had been transposed as plaintiff No.2, she is entitled to continue the suit and that her counter claim would be treated as plaint in the suit. It therefore held that the respondent is entitled to seek amendment of the plaint as well as her written statement-cum-counter claim.

Learned counsel for the petitioners submits that the plaint could not have been allowed to be amended by the respondent and that she can only amend her written statement-cum-counter claim. He therefore states that his clients are not inclined to challenge I.A.No.1636 of 2014 but the order dated 09.02.2015 in I.A.No.2019 of 2014 has to be set aside.

Learned counsel for the respondent, on the other hand, contends that the written statement-cum-counter claim was originally filed by the respondent supporting her mother, the sole plaintiff. But after death of the sole plaintiff, once the respondent was transposed as Plaintiff No.2, the said written statement-cum-counter claim filed by the respondent earlier would be treated as the plaint and therefore the objection raised by the petitioners cannot be sustained.

From the facts narrated above, there is no dispute that the suit was originally filed by the mother of the petitioners and the respondent for partition and that the respondent herein who was the 3rd defendant, originally filed a counter claim therein. Subsequently, the plaintiff wanted to withdraw the same. But in view of the counter claim, the Court below had passed orders on 28.03.2014 transposing the respondent as plaintiff No.2 in the suit after death of her mother and directing that the written statement-cum-counter claim shall be treated as the plaint in the suit. Once her mother died, the respondent's share would get enlarged from 1/4th to 1/3rd. So she is entitled to seek amendment of the plaint as well as her written statement-cum-counter claim. In order to ensure that her claim would be considered by the Court below, by way of abundant caution, she sought amendment of both the plaint as well as written statement-cum-counter claim. Obviously, her written statement-cum-counter claim would be treated as a plaint after her transposition. To avoid any confusion and by way of abundant caution, the respondent had sought amendment of both. No objection can be taken to this. If the respondent is not permitted to amend the plaint which is in fact her own written statement-cum-counter claim, the petitioners would then contend that since the plaint is not amended, she cannot claim 1/3rd share in the suit after trial. This would cause grave prejudice to the respondent.

Therefore, I do not see any merit in the Revision and the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

M.S. RAMACHANDRA RAO, J

15.04.2015

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