

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.403 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.18.11.2014 in I.A.No.229 of 2014 in OS.No.21 of 2006 on the file of Junior Civil Judge, Sidhout.

2. The petitioner herein is plaintiff in the suit.
3. He filed the suit against respondents for declaration of title to, and for delivery of possession of the suit schedule property.
4. In the plaint, petitioner contended that his father and father of defendants, who are brothers, borrowed some amounts from Land Mortgage Bank, Rajampet while they were joint, and that later the same were discharged by them; that although an extent of Acs.1.65 cents in Sy.No.405 was purchased by the two brothers, there was an oral partition of this and other properties in 1947 and the above property fell to the share of the petitioner's father and on his death since 2003, petitioner is in possession and enjoyment of the same.
5. The respondents/defendants filed a written statement contending that when the land in Sy.No.405 was brought up for sale by the Land Mortgage Bank, Rajampet, there was an agreement between father of plaintiff and father of defendant nos.1 and 2; that the father of defendant nos.1 and 2 discharged the entire loan amount and in lieu of that, the father of plaintiff executed an agreement in favour of father of defendant nos.1 and 2 on 27.12.1953; and after that agreement, possession of the half share of the father of plaintiff was delivered to father of

defendant nos.1 and 2.

6. Issues were framed and trial commenced.
7. The plaintiff in his chief-examination affidavit specifically denied this allegation in para.5 thereof.
8. Thereafter, after the evidence was closed and the case was coming up for arguments, the present application was filed under Order 6 Rule 17 C.P.C. to amend the plaint. In this application, the plaintiff sought to contend that father of defendant nos.1 and 2 had discharged the debt to Land Mortgage Bank, Rajampet and there was an agreement that in lieu of that father of defendant nos.1 and 2 took possession of the suit schedule property and enjoyed the same till 1971; on 06.12.1972 a Panchayat was affected in which the elders advised father of defendant nos.1 and 2 to deliver the possession of plaint schedule property to the father of plaintiff; and in that panchayat an unregistered sale deed dt.06.12.1972 was executed.
9. This application was opposed by defendants contending that this application has been filed only to drag on the matter and to fill up lacunaes and admissions in petitioner's cross-examination.
10. By judgment dt.18.11.2014, the Court below dismissed the said application. It held that by filing the present application for amendment of plaint, plaintiff is intending to introduce a new plea which is inconsistent with that of his earlier plea and the evidence on record, and this is not permissible. It was further held that when the plaintiff in his pleadings specifically denied that father of defendant nos.1 and 2 had discharged the entire debt of Land Mortgage Bank including share of the father of

plaintiff and half share of property in Sy.No.405 was delivered to father of defendant nos.1 and 2, now he cannot be permitted to plead the same. It also held that if the application is allowed, it would lead to introduction of a new cause of action for the plaintiff from 1972 and that the plaintiff is trying to fill up the lacuna in his evidence.

11. Questioning the same, this Revision is filed.
12. It is the contention of the counsel for petitioner that the Court below has erred in dismissing the application for amendment. He contended that the agreement dt.06.12.1972 executed by father of defendant nos.1 and 2 in favour of plaintiff's father came to light recently stating how his father and father of defendant nos.1 and 2 jointly borrowed the loan from the Land Mortgage Bank, Rajampet and father of defendant nos.1 and 2 paid the entire loan amount when the land was put to auction and in lieu of payment of the entire loan amount, father of defendant nos.1 and 2 enjoyed the suit property. He further contended that on 06.12.1972, the elders who participated in the panchayat advised father of defendant nos. 1 and 2 to give the land to the plaintiff's father, and on their advise father of defendant nos.1 and 2 executed the said agreement in his own hand-writing in favour of plaintiff's father pursuant to which the plaintiff had been in continuous possession and enjoyment of the property till December, 2003. He also contended that since this document has come to light only now, the petitioner ought to be allowed to amend the pleadings in the plaint.
13. I am unable to agree with the said submission.
14. The petitioner in the plaint had contended that his father and the

defendants' father had discharged the loan to Land Mortgage Bank, Rajampet and even though respondents pleaded that the father of defendant nos.1 and 2 alone discharged the loan, and in lieu thereof the property was delivered to their father, the plaintiffs specifically denied it in his chief-examination affidavit so he cannot therefore be now allowed to take a plea inconsistent with the stand taken by him. Moreover, the trial has already concluded and the matter is posted for arguments. If at this stage, a totally new case is allowed to be set up, that too, inconsistent with the original pleading in the plaint, grave and irreparable loss would be caused to respondents. Therefore, I do not find any merit in the Revision and is accordingly dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 26-03-2015

Ndr/*