

HONOURABLE SRI JUSTICE C.KODANDA RAM

CIVIL REVISION PETITION No. 2197 OF 2015

DATED 1ST OCTOBER, 2015.

BETWEEN

Seesa Jayaramulu Goud (died) Per L.Rs.

.....Petitioners

And

Musalaju Laxamana Chari and ors

...Respondents.

HONOURABLE SRI JUSTICE C.KODANDA RAM

CIVIL REVISION PETITION No. 2197 OF 2015

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ORDER:

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This Civil Revision Petition is filed aggrieved by the order dated 28.4.2015 passed by the learned Junior Civil Judge, at Alair whereby I.A.No.289 of 2014 in O.S.No.3 of

2013 filed by petitioners/Defendants 22 to 24 seeking amendment of written statement was dismissed.

It is the case of the petitioners/Defendants 22 to 24 & 32 to 34 that the first defendant at the earlier point of time sold an extent of Ac.0.21 guntas in Sy.No.133 of Thallagudem, H/O. Peddakandukur village, Yadagirigutta Mandal, Nalgonda District and the said fact came to knowledge of the petitioners only recently. Inasmuch as the suit was instituted for partition and the petitioners are the *bona fide* purchasers from the first defendant, who in fact sold the said property, it is necessary to bring the said fact on record by amendment of the written statement.

The aforesaid I.A. was contested by plaintiffs as well as first defendant . The Court below after hearing both sides dismissed the said application.

Heard learned Counsel for the petitioners and learned Counsel for the respondents.

The learned Junior Civil Judge dismissed the said I.A. on the ground that no material is placed on record by the petitioners to establish that the property to an extent of Ac.0.21 guntas in Sy.No.133 of Thallagudem was standing in the name of Laxmipathi who was the common ancestor of plaintiffs and defendants. The learned Junior Civil Judge further observed that the application was filed by the General Power of Attorney of Defendant No.24 to permit him to amend the written statement of Defendant No.23 which was adopted by Defendant No.24, however, there is no such amendment petition filed on behalf of Defendant No.23. The learned Junior Civil Judge further observed that the suit is of the year 2005 and is at the stage of defendants' evidence. Observing so, the learned Junior Civil Judge found that there is no merit in the petition and dismissed accordingly.

At the out set the observation made by the Court below as to whether the subject property belongs to common ancestor, namely, Laxmipathi, or not is not required to be expressed. In view thereof, the observation made by the Court below should not be treated as an opinion expressed and it is for the parties to adduce necessary

evidence if they so desired for the purpose of supporting their respective case. Thus the observation made by the Court below as to whether the subject property belongs to common ancestor, Laxmipathi or nor shall be eschewed from the consideration point of view while adjudicating the main case in future. Further one cannot find fault with the order for not allowing the amendment petition. In that context, Order 6 Rule 17 CPC may be noticed, which read as follows:

“ Amendment of Pleadings: The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial”

There is a statutory proviso under Order 6 Rule 17 CPC that except in exceptional circumstances, after commencement of trial, application for amendment of pleadings shall not be allowed. In the present case unfortunately no details of exceptional circumstances are pleaded for allowing the amendment petition and when the petitioners have knowledge that the subject property is also part of the joint family property and the same was sold, in the absence of effort put in by the petitioners at the earlier point of time to enquire into the details of the joint family properties, the exception provided in proviso to Order 6 Rule 17 CPC cannot be invoked.. In that view of the matter, the judgments relied on by the learned Counsel for the petitioners in ***Baldev Singh Vs. Manohar Singh*** {AIR 2006 SC 2832} and ***Rajesh Kumar Aggarwal Vs. K.K.Modi*** {AIR 2006 SC 1647} do not support their case.

In ***Baldev Singh case*** (supra), the amendment was allowed in the peculiar facts and circumstances of that case, wherein the trial has not yet commenced, which was an exception with in the purview of Order 6 Rule 17 CPC. So far as decision in ***Rajesh Kumar Aggarwal case*** (supra) is concerned, it is a case wherein the Apex Court had provided guidance promulgating that it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties in controversy. In the present case, the reason for the petitioners

to bring on record the alleged factum of sale is only to buttress the argument that Defendant No.1 had sold the subject property at earlier point of time and thus it is implied on the part of Defendant No.1 to state that the subject property is standing in the name of the common ancestor. At any rate this aspect of the matter whether Defendant No.1 had already sold the subject property or not is required to be established and for obvious reasons this Court is not inclined to deal with the said contention without there being any material on record brought by either of the party. Suffice to say, in the present case, trial has already commenced and for the discussion made hereinabove, the exception provided under proviso to Order 6 Rule 17 CPC cannot be invoked to seek amendment of the pleadings as sought for.

In view of the foregoing discussion, this Court is of the opinion that the trial Court has rightly rejected the interlocutory application through the order under revision and the same does not call for any interference by this Court.

In the result, the Civil Revision Petition is dismissed. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE C. KODANDA RAM

DATED 1ST OCTOBER, 2015

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