

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Civil Revision Petition No.2508 of 2015

Between :-

Jayanthi Venkata Kanaka Durga Prasad Rao

.. Petitioner

And

Elisetty Krishnabhanu Kumari
And others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 21-07-2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of Judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wish to see
the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Civil Revision Petition No.2508 of 2015

ORDER:-

The petitioner is the 1st defendant and the 1st respondent is the plaintiff. The other respondents are defendants No.2 to 8 in the suit.

2. For the sake of convenience, the parties are referred to as they are arrayed in the suit.

3. The plaintiff is the sister and she filed the suit on the file of the District Judge, Vizianagaram for partition of the schedule properties.

The contention of the plaintiff is that the 1st defendant being the eldest brother had been acting as Karta of the Joint Hindu Family after the death of their father.

4. The 1st defendant in his written statement contended that it is not he but their mother who was the Karta of the Joint Hindu Family and was managing the properties.

5. On the basis of the pleadings, the issues were framed and the suit was coming up for trial.

6. The 1st defendant filed I.A.No.1738 of 2012 for framing an additional issue to the following effect:-

”Whether the 1st defendant is Manager/Karta of the family as claimed by the plaintiff?”

7. This application is resisted by the plaintiff contending that the petitioner/1st defendant is trying to disown his liability as Karta of the family by asserting that their mother who was the Karta. By order, dated 08-06-2015, the learned I-Additional District Judge, Vizianagaram, has allowed the application but framed the issue to the following effect:-

“Whether the mother of the parties to the suit, ever acted as Kartha/Manager of the Hindu Joint Family, as pleaded by the 1st defendant?”

8. Aggrieved by the said order, the petitioner/1st defendant has filed

the revision. It is contended that even though the petitioner/1st defendant sought for the issue to the effect as to whether it is the 1st defendant who is manager/karta of the family as pleaded by the plaintiff but the learned Additional District Judge though allowed the petition but framed the issue as to whether the mother of the parties to the suit was the Karta or the Manager of the Joint Hindu Family.

9. Learned Counsel appearing for the petitioner submits that the learned trial Judge has erred in framing the issues to that effect since even though the application filed by the petitioner/D.1 was allowed, the issue that is framed is as contended by the respondent in Interlocutory Application/the plaintiff in the suit.

10. I have gone through the entire material on record. I am satisfied that the learned trial Judge has erred in framing the issue as stated above. When the petition filed by the 1st defendant was allowed, the issue as sought for by him has to be framed and that has not been done. Instead, the additional issue that is framed by the trial Court is as per the contention of the respondent/plaintiff.

11. The said order therefore suffers from irregularity warranting interference. However, since the additional issue has been framed by the learned I-Additional District Judge in accordance with the contention of the plaintiff, the learned trial Judge is directed to frame one more additional issue as prayed for by the petitioner/D.1.

12. In the result, the Civil Revision Petition is allowed with the above direction. No costs.

Miscellaneous Petitions, if any, pending in this revision shall stand closed.

M.K.S.Jaiswal, J

21st July, 2015
smr