

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.4870 of 2014

Date:13.02.2015

Between:

M. Koti Reddy

...Petitioner.

AND

M.V. Subramanyeswar Reddy and others.

...Respondents.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.4870 of 2014

ORDER:

This revision is preferred against orders dated 31-07-2014 in I.A.No.105/2014 in O.S.No.99/2005 whereunder trial Court dismissed petition filed under Order 1 Rule 10 CPC seeking permission to implead respondents 10 to 12 of the application as defendants 10 to 12 to the main suit.

2. Heard both sides.

3. Advocate for revision petitioner submitted that the

proposed defendants are family members and they are none other than wife and children of second respondent and during cross-examination of D.W.3, who is defendant No.3, it was elicited that the properties mentioned in items M, K, E of 'B' schedule stands in the name of these proposed defendants and therefore, their presence is necessary for determination of disputes in the partition suit.

He submitted that along with this application, an application for amendment of the schedule was filed and the Court permitted to amend the schedule and allowed that application, but erroneously dismissed this application.

He submitted that no prejudice would be caused to the other side by impleading these petitioners, on the other hand, future complications can be avoided by impleading these petitioners. Other side Advocate opposed the revision and submitted that no reasons are given in the affidavit as to the necessity of these persons and the relief to be granted against the proposed defendants.

5. Now the point that would arise for my consideration in this revision is whether order of Court below is legal, proper and correct?

6. **Point:-** As seen from the affidavit filed in support of the petition, the petitioner fled suit seeking partition and separate possession of several items of the plaint schedule property and he was examined as P.W.1 and thereafter, examined six witnesses on his behalf and D3 was examined as D.W.1

and D1 was examined as D.W.2, he deposed during cross-examination that the proposed respondents 10 to 12 acquired plaint 'B' schedule items i.e., M, K, E with the composite funds of the joint family and that the same has come to his knowledge only during cross-examination of D.W.2, therefore, their presence is necessary and no prejudice will be caused to the other side, if they are arrayed as defendants. As per Rule 28 of Civil Rules of Practice, it is mandatory on the part of the party, who files a petition under Order 1 Rule 10, to plead consequential amendment and the Court below shall reject the application if no such consequential amendment is pleaded. According to the proviso to Rule 28, verbal corrections may at any time be permitted to be amended. This Rule 28 is also applicable to petitioner under Order VI Rule 17 and Order 22 of CPC. So only in case of amendment petitions, if the corrections are only verbal, then there may not be any requirement to plead consequential amendment and the consequential prayer, but here the request of the plaintiff is to implead certain persons as defendants 10 to 12 and when the suit is for partition, it is mandatory on the part of the plaintiff to ask for consequential relief against the proposed defendants and also by seeking necessary consequential amendment in the pleadings. Admittedly, no relief is claimed against proposed parties and no such consequential amendment is sought in the application filed under Order 1 Rule 10. Court below observed that the plaintiff is expected to enquire at the time of filing of the suit about the details of the properties for which

partition is sought and the persons in whose names such property stand and once the petitioner has ignored to make such enquiry, he is prevented from taking such recourse at a later stage. In my view, trial Court is absolutely right in observing so particularly when the petition is filed after closure of their evidence and commencement of other side evidence. According to me, the trial Court ought to have rejected the application even at the initial stage. So for these reasons, I am of the view that there is absolutely no illegality in the order of the lower Court and the Civil Revision Petition is liable to be dismissed as devoid of merits.

7. Accordingly, revision is dismissed as devoid of merits.
No costs.

8. As a sequel, miscellaneous petitions, if any, pending in this revision, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:13.02.2015

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