

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

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CIVIL REVISION PETITION No.3285 of 2015

Between:

Dara Chennaiah @ Seenaiah.

....Petitioner

and

Dara Ramanaiah and others.

....Respondents

JUDGMENT PRONOUNCED ON : 27.11.2015

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes

may be allowed to see the Judgments?

2. Whether the copies of judgment may be : No

Marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to : No

see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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ORDER:

The petitioner is the first defendant in O.S.No.151 of 2010 on the file of the learned Senior Civil Judge, Gudur. The first respondent herein filed the said suit seeking partition of the suit schedule property into four equal shares and to put the plaintiff in separate possession of his share. A written statement was filed on behalf of the defendants. Thereafter, before commencement of the trial, I.A.No.632 of 2013 was filed by the first defendant seeking amendment of the said written statement and when the said application was dismissed by the learned Senior Civil Judge, Gudur, by order dated 14.07.2015, the present Civil Revision Petition is filed.

A portion of the common written statement filed on behalf of the defendants reads as follows:

“5. The defendants further submit that so far as the land shown as item Nos.3 to 5 in the plaint-schedule, it is the joint family property and that was also partitioned among the brothers and that was also partitioned among the brothers and each of them have been enjoying their respective shares. Despite that, the plaintiff has come forward with false allegations only to trouble the defendants by showing false extents i.e., the plaintiff has shown the extent of item No.3 of the plaint schedule as Ac.2-00 though it is Ac.3-00. Even then the defendants have no objection to partition the land shown as item Nos.3 to 5 with correct extent of item No.3 into four equal shares.”

The said portion is sought to be amended seeking to delete item No.5 from out of the purview of the said portion of the written statement on the ground that the first defendant obtained a decree and judgment of permanent injunction against his brothers in O.S.No.277 of 2011 on the file of the Senior Civil Judge, Gudur on 14.03.2012, on the basis that it was granted to him under RC B3 2929/76, dated 17.09.1976, by the then Tahsildar and claimed the same as his exclusive property. A counter affidavit was filed stating that the application was belated

and it was filed to drag on the matter.

It is an admitted case that the trial has not yet been commenced. The learned trial Judge passed a lengthy order and dismissed the application.

The substance of the amendment is that the first defendant in the suit wanted to claim that item No.5 of the suit schedule property is his exclusive property and is not liable for partition, whereas in respect of item Nos.3 and 4 he is agreeable for partition. The trial Court held that the averments made in the earlier common written statement amount to admission and they cannot be changed now by virtue of the amendment. The first respondent did not file a counter affidavit stating that any prejudice was caused by virtue of such amendment. The trial is also not commenced.

In the circumstances, the lower Court should have allowed the said amendment, as it is not going to cause any prejudice to the case of the plaintiff. If the plaintiff is aggrieved, the plaintiff should have been given an opportunity to file rejoinder.

In the circumstances, the impugned order in I.A.No.632 of 2013, dated 14.07.2015 is set aside and I.A.No.632 of 2013 for amendment of written statement is allowed.

The Civil Revision Petition is, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

27.11.2015

vs

