

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

CIVIL REVISION PETITION No.4202 OF 2014

ORDER:-

This Revision is preferred against order overruling the objection raised by the counsel for revision petitioners herein/defendants during the cross examination of D.W.6 in O.S.No.73 of 1999 on the file of the Principal District Munsif, Srikakulam on 10.10.2014.

2. Brief facts leading to this Revision are as follows:

Petitioners herein are defendants in O.S.No.73 of 1999 in a suit filed for permanent injunction by respondents herein/plaintiffs. Trial was already commenced and at the stage of cross examination of D.W.6, petitioners/defendants objected for putting a particular question to the witness touching the plea of partition. As the trial Judge overruled the objection and allowed the question, defendants preferred the present revision.

3. Heard both sides.

4. From the submissions of both sides, it is clear that another suit in O.S.No.95 of 1999 was filed for partition and both the suits were clubbed and joint trial is being conducted. According to revision petitioners herein, the property is a joint family property and for that, they filed a suit for partition. According to respondents herein, there was no joint family property and partition was already taken place in the year 1961. These aspects have to be decided only on appreciation of evidence by the trial Court.

5. Now the point that would arise for my consideration in this revision is:

“Whether overruling the objection raised by counsel for revision petitioners herein/defendants during the cross

examination of D.W.6 in O.S.No.73 of 1999 on the file of the Principal District Munsif, Srikakulam on 10.10.2014 is correct, legal and proper or not?"

6. **POINT:-** D.W.6 is one of the daughters of late Gunnayya and she stated in the chief affidavit that there is no partition and the property is still joint, but in the cross examination, plaintiffs' counsel put the following question for which petitioners/defendants raised objection. The question that was put to D.W.6 is:

"What happened to the share of properties of Ramulu?"

Now the objection of the Advocate for revision petitioners is when the defendants specifically contended that there is no partition, putting such question would pre-suppose a partition and it would defeat the interest of the defendants in the partition suit. According to Advocate for respondents/plaintiffs, there is nothing misleading in putting such question, as witness deposed about purchasing of some property by Ramulu, therefore, the above question is absolutely right and there is nothing wrong in putting such question, and that question is only in respect of the properties that were purchased by Ramulu.

7. Now, the grievance of the revision petitioners is for putting a question in respect of share of properties of Ramulu, as it defeats their interests in the partition suit. According to Advocate for respondents/plaintiffs, this question is only in relation to the properties that were purchased by Ramulu. So, to avoid ambiguity and also without causing prejudice to both the parties, I feel that by allowing the respondents/plaintiffs to mould the question to the extent of what happened to the properties of Ramulu, the cross examination can be proceeded with so that no prejudice would be caused to both the parties.

8. For these reasons, the Court below is directed to permit the respondents/plaintiffs' counsel to put the question only to elicit from the witness as to what happened to the properties of Ramulu, but not with

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DATE: 23.01.2015

AMD