

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
FRIDAY, THE SEVENTEENTH DAY OF JULY
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

CIVIL REVISION PETITION No.1492 of 2015

BETWEEN

C. Dhorai.

... PETITIONER

AND

C. Thayagaraj and others.

...RESPONDENTS

Counsel for the Petitioner: MR. T.G. PRASAD REDDY

Counsel for the Respondent: MR. O. UDAYA KUMAR – R1

The Court made the following:

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ORDER:

This revision is at the instance of the defendant No.2 in O.S.No.106 of 2009 on the file of the Additional Senior Civil Judge, Chittoor. The petitioner questions the impugned order dated 04.02.2015 passed in the memo filed by the plaintiff/first respondent herein.

2. By the aforesaid memo, the plaintiff, who had lead evidence on issue No.1, had sought leave of the Court to lead rebuttal evidence on issues 2 to 4 after the defendants lead their evidence. The Court below found that the burden of proof on issue No.1 being that of the plaintiff and he having already discharged the said burden, he is entitled to his right to lead rebuttal evidence if the defendants lead evidence on issues 2 to 4.

3. I have seen the issues framed by the Court below, which are as under:

1. Whether the plaint schedule property is a joint family property?
2. Whether the plaintiff is one of the parties to the Regd. Partition deed dated 07-01-1993 and that now, he is stopped from filing the suit for partition?
3. Whether the plaintiff by suppressing the suit in O.S.No.786/2008 on the file of the learned II Addl. Junior Civil Judge's Court, Chittoor, has filed the present suit for wrongful gain?
4. Whether the suit is bad for non-joinder of necessary parties and for mis-joinder of parties?
5. Whether there is a cause of action to file the suit?
6. Whether the plaintiff is entitled for the relief as prayed in the suit?
7. To what relief?

4. It is evident from the above that except issue No.1, the burden of proof on issues 2 to 4 is that of the defendants and the said issues are based upon the pleas of the defendants in the written statement. Even so far as issue No.1 is concerned, it is a statutory presumption. However, the plaintiff has lead evidence to that extent and sought to reserve his right to lead rebuttal evidence after the defendants discharge their burden with regard to issues 2 to 4. I do not find any error on the part of the Court below in passing the impugned order as the issues 2 to 4 are clearly being the burden of the defendants. Hence, no interference is called for.

The civil revision petition is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no

order as to costs.

July 17, 2015
DSK

VILAS V. AFZULPURKAR, J