

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.3861 of 2014

ORDER :

This revision is preferred against orders dated 08.10.2014 in I.A.No.510 of 2014 in O.S.No.25 of 2009, where under Senior Civil Judge, Siddipet, Medak District, allowed I.A.No.510 of 2014 and permitted defendant No.5 to file written statement.

2. Revision petition herein is plaintiff and he filed suit for partition, in which defendant No.4 filed written statement and the same was adopted by defendant No.5 through a memo. But, subsequently defendants No.4 and 5 together filed I.A.No.510 of 2014 to permit defendant No.5 to file written statement. Now the objection of revision petitioner is that when a written statement is already on record, without cancellation or without withdrawing it, a fresh written statement cannot be permitted to be filed.

3. Heard both sides.

4. Advocate for revision petitioner mainly contended when defendant No.5 noticed that written statement filed earlier was not legal, he came forward with the present petition to fill up the lacuna therefore he cannot be permitted. He further submitted that when there is a specific provision, the trial Court ignoring that provision allowed the petition by exercising the powers under

Section 151 C.P.C. and thereby, the trial Court has committed an error and the revision has to be allowed.

5. Other side Advocate submitted that defendant No.5 has not taken any new plea nor filed any new written statement. He submitted the written statement which was filed by defendant No.4 in verbatim filed again and as there is no new plea or new case set up by defendant No.5, the objection of revision petitioner is not tenable.

6. Now the point that would arise for my consideration in this petition is:

Whether the order in I.A.No.510 of 2014 in O.S.No.25 of 2009 on the file of the Senior Civil Judge, Siddipet, Medak District, is legal, proper and correct?

POINT :

7. Admittedly, defendant No.5 filed a memo adopting the written statement of defendant No.4 and thereafter issues were framed and trial was also commenced. At that stage defendant No.5 filed the very same written statement with a petition to permit him to file it and treat it as individual written statement and the same was objected by plaintiff. From the facts, it is clear that there is no new ground or new defence taken by defendant No.5 in the new written statement and it is only a reproduction of earlier written statement (filed by defendant No.4), which was already on record on the basis of which issues were already framed. When that is the case, there is no need for defendant No.5 to file a separate written

statement and he can insist the Court to consider the pleas that were already raised in the earlier written statement while deciding the issues in the suit. Now the trial Court by allowing the petition created the controversy, which I feel, that has to be corrected by allowing the revision and directing the trial Court to consider the written statement, which was already on record and adopted by defendant No.5 by way of a memo while deciding the issues involved in the suit.

8. With this observation, revision is allowed and impugned order is set aside. No costs.

9. Miscellaneous Petitions, if any, shall stand closed.

S. RAVI KUMAR, J

2nd January 2015.

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