

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.153 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.15.10.2014 in I.A.No.1417 of 2011 in O.S.No.757 of 2010 on the file of the Principal Senior Civil Judge, Tirupati.

2. The petitioner herein is the plaintiff in the suit which he had filed for partition of the plaint schedule properties and for recovery of possession of 1/4th share therein.

3. Pending suit, he filed I.A.No.1417 of 2011 to include an item of property which is a house site in Shanthi Nagar (Gandhi Nagar) in Tirupati Town as one of the plaint schedule items, stating that it is also required to be partitioned.

4. In the affidavit filed in support of the said application, he stated that he came to know that this property is also a joint family property a week ago, and if he did not include it, it might amount to a case of seeking partial partition and would lead to multiplicity of proceedings.

5. This application was opposed by 7th respondent

herein, contending that the application for amendment ought not to be allowed, because the petitioner is related to respondent nos.1 to 5 and he is also aware that the plaint schedule properties had been partitioned long back. He also stated that the application is not maintainable without filing market value certificate of the proposed property said to be included in the plaint schedule.

6. By order dt.15.10.2014, the Court below dismissed the said application on the sole ground that the market value of the property sought to be included is not mentioned and proposed amendments in respect of market value, and the market value of the share of petitioner, are not mentioned.

7. Challenging the same, the present Revision is filed.

8. Heard J. Sreenivasa Rao, counsel for petitioner, and Sri P . Durga Prasad, counsel for respondent nos.6 to 10. None appears for respondent nos.1 to 5.

9. The counsel for petitioner contended that the reason for dismissing I.A.No.1417 of 2011 given by the Court below cannot be accepted, and if market value is not mentioned, the Court below should have returned the petition asking the party to furnish details of the same; and

it could not have straightaway rejected the application on the said ground.

10. Although the counsel for respondent has supported the order passed by the Court below, I am of the opinion that the contention of the counsel for petitioner needs to be upheld. If the Court below was of the opinion that the market value of the property sought to be included is not mentioned in the affidavit filed in support of the amendment application. The Court should have simply returned the application asking the counsel for petitioner to supply the market value of the property sought to be included. Without doing so, it cannot straightaway dismiss the application.

11. In this view of the matter, the Civil Revision Petition is allowed and the order dt.15.10.2014 in I.A.No.1417 of 2011 in O.S.No.757 of 2010 on the file of the Principal Senior Civil Judge, Tirupati is set aside; the said I.A. is allowed on condition of petitioner communicating the market value of property now sought to be included as well as the market value of the share of petitioner for inclusion in the plaint, within a period of three (03) weeks from the date of receipt of a copy of this order. No order as to costs.

12. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.08.2015

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