

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA  
RAO**

**CIVIL REVISION PETITION No.3355 of 2014**

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**ORDER:**  
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This Civil Revision Petition is filed challenging the order

dt.12-08-2014 in I.A.No.1625 of 2009 in O.S.No.82 of 2005 of the Senior Civil Judge, Tadepalligudem.

2. The petitioners herein are plaintiffs in the said suit.

The

1<sup>st</sup> petitioner appears to have died pending suit. The suit was filed by petitioners seeking partition of the plaint schedule properties into 3 equal shares and for allotment of one such share to 1<sup>st</sup> petitioner; for partitioning the plaint schedule property allotting 1/3<sup>rd</sup> share in the remaining 2/3<sup>rd</sup> share of the plaint schedule property to 2<sup>nd</sup> petitioner, for mesne profits and costs. In the plaint schedule, petitioners mentioned 6 items of immoveable properties.

3. Written statement was filed by 1<sup>st</sup> respondent taking a plea in para-6 that they are joint family properties, and in para-13 reference was made to the fact that one

Tatabbayi (since deceased) purchased extent Ac.0.42 cents in R.S.No.580/3 of Pippara village with joint family funds. In the written statement schedule, it is also mentioned that an extent of Ac.0.45 cents in R.S.No.23/4 was the property of late Venkata Rao, who is the father of late Tatabbayi.

4. Issues were framed and trial commenced. Evidence on the side of plaintiffs was commenced and P.W.1 was examined and the matter was posted for further evidence.

5. At that stage, an application seeking amendment of the plaint was filed by petitioners to incorporate the above 2 items as Item Nos.8 and Item No.7 in the plaint schedule in the plaint and also a further item of Ac.3.00 cents in R.S.No.246/2 as item No.9 in the plaint. Thus, the plaint schedule was sought to be amended by including these items in the plaint. Consequential amendments in the body of the plaint were also sought for.

6. This application was opposed by respondents and it was contended that respondent Nos.1 and 2 are not in possession of the proposed item No.9. It was alleged that the mother of 2<sup>nd</sup> petitioner is fully aware of all items of the plaint schedule properties and that item Nos.8 and 7 sought to be included in the plaint schedule by way of amendment are not liable for partition since they fell to the

share of 1<sup>st</sup> respondent in an earlier family arrangement.

7. By order dt.12-08-2014, the Court below dismissed I.A.No.1625 of 2009. It held that if really the 2<sup>nd</sup> petitioner was diligent, she should have filed this application immediately after filing of written statement by 2<sup>nd</sup> respondent. It placed reliance on Order VI Rule 17 CPC, and observed that the proposed item Nos.8 and 9 are not shown to be the properties liable for partition.

8. Questioning the same, this Revision is filed.

9. Heard Ms.Revathi, learned counsel for Sri N.Satyanarayana, learned counsel for petitioners and Sri S.Subba Reddy, learned counsel for respondent Nos.1 and 2.

10. It is pertinent to note that the suit in question is a suit for partition. In a suit for partition, every party is deemed to be a plaintiff. It is also settled law that a suit for partial partition is normally not maintainable unless all the properties which are liable for partition are included in the plaint schedule property. No doubt some items notably item Nos.7, 8 and 9 which are now sought to be included in the schedule are not originally included in the schedule. But admittedly, in the written statement filed by respondent Nos.1 and 2, the proposed item No.8 was

admitted to have been purchased by late Tatabbayi from the joint family funds and the proposed item No.7 was stated to have fallen to the share of late Venkata Rao, father of Tatabbayi. So the petitioners came to know of these items after filing of suit. Hence they have sufficient cause for not including them initially in the plaint when the plaint was filed. It cannot be said that any prejudice would be caused to respondent Nos.1 and 2 if these items are included in the plaint schedule since their written statement disclosed this fact. Of course any such inclusion would be subject to their right to contend that they are not liable for partition on the ground that they are covered by an earlier family arrangement.

11. Even with regard to the proposed item No.9, no doubt the petitioners have contended that they have a share therein and that they have come to know about this item after filing the suit. The respondent Nos.1 and 2 have taken a plea that they are not in possession of this item of property. Since the plea of petitioners is that they came to know about this item after filing of suit, it cannot be said that they should have included it in the plaint schedule when the plaint was originally filed.

12. Therefore, in the facts and circumstances of the case, I am of the opinion that sufficient cause has been

shown by petitioners for not including these items in the schedule originally, and therefore, the Court below ought to have permitted the amendment of the plaint schedule instead of dismissing the application for amendment.

13. Therefore, the impugned order is set aside and the Revision is allowed. No costs. Since the suit is of the year 2005, the Court below shall endeavour to dispose of the suit as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

14. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

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**JUSTICE M.S. RAMACHANDRA RAO**

Date: 17-06-2015

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