

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4117 of 2014

ORDER:

The revision petitioners are the defendants 3, 7 and 8 of O.S.No.563 of 2009 on the file of I Senior Civil Judge, City Civil Court, Hyderabad, which was filed against 18 defendants for partition of the schedule property. The respondents 2 to 16 are some of the defendants.

2. The plaintiff, respondents 3 to 12 of I.A.No.375 of 2014 are no other than children of the 2nd respondent to the petition. The plaintiff filed said suit for partition of plaintiff 'A' and 'B' schedule properties against the defendants supra. It is pending suit and in the course of trial and particularly from the cross examination of PW.1 on 11.04.2012 by the defendants 3, 7 and 8, who are petitioners in I.A.No.375 of 2014 it is suggested that house bearing No.18-10-40/ 24 at Barkas, Hyderabad, was purchased by plaintiff's father and he is deposing falsehood as if said house belongs to his mother and few lines thereafter it is stated by the plaintiff that said house admeasuring 260 Sq.yards, he does not know from whom and when his mother purchased. It is stated that there is one Urdu document under which his mother purchased house and he filed the same in the suit. He denied the suggestion that his

father sold an extent of 35 Sq.yards of the suit property and constructed the house with the said sale proceeds. It is in this context after said cross examination of PW.1 from the so called admission by PW.1 of he can file the document before the Court saying said house was purchased by his mother and not belongs to his father, an application covered by I.A.No.375 of 2014 was filed by the defendants 3, 7 and 8 to direct the plaintiff/ 1st respondent to produce that document which he deposed supra. Same after contest was ended in dismissal on 23.07.2014 with observation that the said document is not subject matter of the suit and no way relates to adjudicate the case and there from dismissed the application.

3. According to the petitioners/ defendants 3, 7 and 8, they are claimed as co-sharers with other defendants and plaintiff intentionally omitted to mention said house property bearing No.18-10-40/ 24, as part of the partitionable property, though that also belongs to their father to be partitionable. No doubt, the trial Court to that extent is right in saying it is not part of the plaint schedule thereby to allow the plaintiff to produce. However, the fact remains that once PW.1 admitted in the cross examination stating that he can produce, the trial Court could have been directed when he is in possession of the document to produce before the Court, it is that too when Order XI Rule 14 C.P.C. enables the Court and when the

defendants in their written statement contested that property is also to be brought into stream of partitionable properties.

4. Having regard to the dismissal of the application by the trial Court is unsustainable, the order dated 23.07.2014 in I.A.No.375 of 2014 in O.S.No.563 of 2009 on the file of I Senior Civil Judge, City Civil Court, Hyderabad, is set aside and the same is allowed, directing the plaintiff to produce said document and it is made clear that if he failed to produce, the trial Court is entitled to draw adverse inference that the property belongs to the plaintiff's mother and not that of plaintiff's father. However, that does not absolve the proof by the defendants' brother claim in the written statement that that is also part of the property of their father and same is also liable to be partitioned, as inference under Section 114 of the Evidence Act is different from proof that to be taken note of.

5. Accordingly, this Civil Revision Petition is allowed. No costs.

6. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:29-09-2016
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