

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.1759 OF 2016

DATED:13-04-2016

Between:

Tellakula Manikanta Himendra ... Petitioner

And

Tellakula Hitendra ... Respondent

COUNSEL FOR THE PETITIONER: Mr. C. Panini Somayaji,
for Mr. P.R. Prasad

COUNSEL FOR THE RESPONDENT: -

THE COURT MADE THE FOLLOWING:

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ORDER:

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This civil revision petition arises out of order dt.04.02.2016 in I.A. No.2294 of 2015 in O.S. No.285 of 2013, on the file of the Principal District Judge, Guntur.

I have heard the learned counsel for the petitioner and perused the record.

The petitioner is the sole defendant in the above mentioned suit filed by the respondent for partition of the plaint schedule properties in two equal shares and allot one such share to the respondent. A detailed written statement was filed on behalf of the petitioner wherein he has taken the defence that on 12.4.2004 Late Tellakula Panduranga Rao had executed his last Will by cancelling the earlier Wills and got the same registered in the office of the Sub-Registrar, Guntur, by bequeathing the plaint schedule properties to his wife Nava Koti Ratnam for life interest and vested remainder to his grand-sons - the plaintiff and the defendant, as per the shares mentioned in the said Will. After the pleadings were completed, the trial has commenced. From the order of the lower court, it is evident that the plaintiff's side evidence was closed. The defendant has filed the affidavit of D.W.1, he was cross-examined to a certain extent and after taking an adjournment for further examination, the petitioner - defendant has filed the above mentioned I.A. seeking amendments to his written statement. Taking the above facts into consideration, the trial Court held that the petitioner failed to show due diligence within the meaning of the proviso to Rule 17 of Order VI of the Code of Civil Procedure, 1908 (CPC).

Under Rule 17 of Order VI of CPC, wide discretion is conferred on the Court to allow either party to alter/amend the pleadings at any

stage of the proceedings. However, this discretion is considerably cut down by the proviso to the said provision. In the case where the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial, the amendment shall not be ordered. In his affidavit, the only reason given by the petitioner is that after the trial has commenced, on his behalf, his father was examined partly as D.W.1, that as the petitioner's counsel was from Vijayawada, he was not actively conducting the proceedings and rarely finding time to attend the Court, that in view of the same, he changed the counsel and engaged a local counsel, that when his present counsel was going through the record, he felt that there is no clarity in the written statement and that it requires to be amended to give full clarity to his case.

In my opinion, the reason assigned by the petitioner does not satisfy requirement of due diligence. Merely because a new counsel has felt that some more clarity is required in the written statement, the Court cannot allow such amendment unless the petitioner shows relevancy of the proposed amendments, more so, after the plaintiff's side evidence was closed and the defendant's side witness was partly cross-examined. If the request of the petitioner for amendment is permitted at this stage, it will lead to inevitable delay in the disposal of the suit, as the plaintiff is bound to be permitted to file additional pleadings to meet the averments made by way of the proposed amendment and also his further examination. This Court is of the opinion that the as petitioner has failed to show due diligence, the lower Court is justified in dismissing application for amendment of the written statement. Hence, I do not find any illegality or jurisdictional error in the order of the lower Court.

The civil revision petition is accordingly dismissed.

As a sequel to dismissal of the civil revision petition, C.R.P.M.P. No.2226 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

13-04-2016

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