

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 1017 OF 2015

DATED 3RD FEBRUARY, 2016

BETWEEN

Smt. Shanta Sukumaran and anr

...Petitioners

And

Smt. Cina Sukumaran and anr

....Respondents.

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.1017 of 2015

ORDER:

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The petitioners herein are defendants 1 and 3 in the suit in O.S.No.1778 of 2006 on the file of the learned I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. The first respondent herein filed the aforesaid suit seeking partition of the suit schedule property and granting 1/4th share in the said

property. The first defendant who is the first petitioner herein filed written statement claiming that the entire property is her absolute property and the same was purchased in the name of her husband though the amount was paid by her. A preliminary decree was passed in the said suit. Against the preliminary decree, an appeal in AS.No. 79 of 2009 was preferred before the learned V Additional District Judge (FTC), Ranga Reddy District and the said appeal was allowed by judgment and decree dated 8.10.2013 setting aside the judgment and decree of the trial Court and remanding the matter to the trial Court with a direction to dispose of the case afresh after giving opportunity to both sides for adducing additional evidence including the documents filed before lower appellate Court in IA.No.182 of 2013. Thereafter, the petitioners/defendants herein filed I.A.No.1247 of 2014 seeking a direction to allow them to amend the written statement by adding paras 5(A) and 5(B). The said application was dismissed by the trial Court through its order dated 6.2.2015 on the ground that the matter was remanded with a direction to adduce additional evidence and also for marking the documents, but not for amendment. Challenging the said order, the present Civil Revision Petition is filed.

The first defendant, who is the first petitioner herein, filed written statement and the relevant portion for adjudication of the present revision reads as follows:

“4. This Defendant submits that she is the absolute owner of the property having purchased the same in the name of her husband by taking loan from the Housing Development Finance Corporation and the said loan was recovered from the salary of this Defendant. All other contentions urged in the plaint are hereby denied and the plaintiff is put to strict proof of the same. This Defendant and her husband executed loan agreement with the Housing Development Finance Corporation on 17.11.1992 and she along with other Defendants are residing in the suit schedule property, which is the only dwelling house. The suit schedule property is the exclusive property of this Defendant and residing there then. As already stated the loan was recovered from the salary of this Defendant and residing there, the suit schedule property is not joint family property of the plaintiff and the defendants.”

Now the proposed amendment reads as follows.

“ 5(A). It is submitted that though the house site was purchased benami and constructed house in the name of T.N.Sukumaran but the consideration was paid by the first defendant and her husband from her streedhana and by obtaining loan from HDFC bank and others and the said loan has been discharged by deducting from her salary. Father of the 1st defendant also sent Rs.15,000/- from Kerala in the joint account of the 1st defendant with late T.N.Sukumaran. That factum regarding discharging of loan by deducting salary of 1st defendant as per the letter issued by the HDFC also has been filed. The plaintiff filed the suit with vague averments and since does not disclose any particulars as to on what basis she claimed the suit property as exclusive property of late T.N.Sukumaran and 1/4th share therein.”

A perusal of the above two paragraphs make it clear that no contradictory stand is being taken by the first defendant in the present suit and what the proposed amendment states is an explanation. The first defendant also sought for inclusion of Para 5B and a reading of the same appears to be contradictory to the stand taken by her in the written statement. In the proposed amendment she not only claims half share, but also a share in the left over property to her husband. However, it is made clear that if the first defendant is entitled for any share, she is entitled to argue that point without seeking necessary amendment contradictory to her earlier stand. In the circumstances, the lower Court should have allowed the application for amendment by adding Para 5(A) only. This Court is of the opinion that the proposed amendment is only an explanation to the earlier stand taken in the written statement of the first defendant. This position is made clear by a three judges Bench of the Apex Court in its recent decision in Mahila Ramkalidevi Vs. Nandram (died) per LR's (2015 AIR SCW 3187). In view of the same, the order in I.A.No.1247 of 2014 dated 6.2.2015 is set aside and the said application is allowed only to the extent of adding the proposed amendment in para 5A to the written statement. Since the suit is already remanded by the lower appellate Court after passing the preliminary decree, it is in the fitness of things to decide the suit as expeditiously as possible but not later than 30.09.2016,.

The Civil Revision Petition is partly allowed. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE A.RAMALINGESWARA RAO

DATED 3rd February, 2016.

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