

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.3390 & 4223 of 2016

COMMON ORDER:

Heard both sides at length and perused the material on record.

2. So far as C.R.P.No.4223 of 2016 is concerned, it is the plaintiff in O.S.No.505 of 2010 maintained the suit for relief of declaration and possession based on registered will said to have been executed by his mother dated 26.12.2006 and some of the defendants therein are no other than the plaintiffs in O.S.No.482 of 2012 and 238 of 2010 respectively. All the three suits are pending on the file of XXIV Additional Chief Judge, City Civil Court, Hyderabad, for trial.

3. So far as O.S.No.482 of 2012 concerned, it is the suit for partition against more than 6 defendants of whom defendant Nos.2 to 6 are the other co-sharers, leave about others are so called tenants of the properties and one of the defendants among them is the plaintiff in O.S.No.505 of 2010 supra.

4. The plaintiff of O.S.No.238 of 2010 is also one of the defendants in O.S.No.505 of 2010 and 482 of 2012 supra and the suit is for declaration and possession based on the selfsame registered will dated 26.12.2006.

5. Practically from the above, O.S.Nos.505 and 238 of 2010 are based on same will by respective so called legatees from alleged respective bequeaths based on same cause of action, though maintained 2 suits and counter to the suits is the partition suit in

O.S.No.482 of 2012 as main defence in the partition suit is based on said will and the bequeaths claimed therein.

6. In fact to avoid duplication of evidence from the hearing of both parties, this Court directs the trial Court to club O.S.No.505 of 2010 and 238 of 2010 with O.S.No.482 of 2012, suit for partition and record common evidence for both suits to say the evidence of plaintiff in O.S.No.482 of 2012 including the supporting defendants, if any if examined on behalf of plaintiff on 'P' series by marking exhibits on 'A' series and the evidence of the respective 2 suits in O.S.Nos.505 and 238 of 2010 on 'D' series with documents on 'B' Series, leave about any third party witnesses documents on 'X' series and court documents on 'C' series, to avoid future confusion and for more clarity.

7. From the above so far as the early disposal of O.S.No.505 of 2010 sought for in CRP.No.4223 of 2016 concerned, the trial Court is directed by virtue of the above directions to club all the suits conduct common trial and give disposal preferably, within five (5) months from the date of receipt of this order.

8. So far as C.R.P.No.3390 of 2016 of the unsuccessful petitioner in I.A.No.813 of 2016 in O.S.No.482 of 2012, no other than the 6th defendant in the partition suit, while sailing with plaintiff therein mostly from the written statement Para 11 supporting the version of the plaint at Para 13 of what the plaintiff of partition suit in O.S.No.482 of 2012 claims of the so called attesor of the alleged registered will dated 26.12.2006 relied by the plaintiffs in O.S.No.505 and 238 of 2010 is not correct. Now in the additional written statement proposed to be filed by way of

clarification on what is mentioned in Para 11 of the original written statement and Para 13 of the plaint. The very plaint averments at Para 13 from its perusal clearly speaks the will is a fabricated outcome and there is fraud played and it is shrouded with suspicion and the other plea is this property is purchased by the father in the name of the mother and she was not having any right or title and the buildings constructed also with the means of the father for the benefit of the family and not to benefit the mother. It is no doubt within the scope of Sections 3 and 4 Benami Transactions (Prohibited) Act for the trial Court to decide in this regard the lis. So far as the written statement Para 11 of the 6th defendant, it is stated said averments of the plaint are partly true, however, the property purchased by father in the name of the mother and constructed house with his means and his mother is mentally sick as stated in the plaint. But so far as the quantum of monthly rents received by defendant Nos.2 and 5 from respective tenants concerned, it is not known how much rent paid by each tenant.

9. Now the additional written statement plea want to introduce as Para 11(a) mentioned in the affidavit petition covered by the impugned order of the lower Court in I.A.No.813 of 2015 no way withdraws any of the admissions either of the plaintiff or of the defendant No.6, but for additional pleadings by clarifying about the mental sickness and the so called fraud how played. Thereby it is not an inconsistent plea much less changes the cause of action of any of the suits lis, apart from defendants are entitled to take inconsistent pleas and it cannot be even be allowed to contend that since sailing with the plaintiff cannot add additional

facts to give strength to the plaint indirectly, as in a suit for partition the co-sharers/defendants are at par with the plaintiffs as also can be seen from Order XXIII Rule 1-A CPC. When even belated amendment sought is not a ground to reject but for to allow on costs is the settled law and what the expressions referred in the lower Court and now again cited of **Heeralal Vs. Kalyan Mal & Others**¹ is by amendment of the written statement withdrawing admission already made cannot be permitted has no application to the present facts to negate, equally the expression placed reliance of **Bijendra Nath Srivastava Vs. Mayank Srivastava**², which is in relation to the amendment of the plaint referred to Order VI Rules 2 and 4 in relation to the material facts to be averred in plaint, particularly in relation to fraud and misconduct etc., that is not applicable to the plea of the defendants. In fact trial is not even shown commenced apart from even in such a case the phrase due diligence requires liberal construction as per the settled law and as also referring to several expressions laid down by this Court in the recent expression in C.R.P.Nos.1751 of 2016 & batch dated 17.10.2016 in **Smt. Mareddy Seetharathnam Vs. Siruvuri Venkatarama Raju and Others**. Thereby the trial Court committed a wrong instead of allowing the amendment at best by imposing costs in dismissing.

10. Accordingly and in the result, C.R.P.Nos.3390 of 2016 & 4223 of 2016 are allowed by permitting amendment, subject to costs of Rs.3,000/- payable by the defendant No.6/petitioner in I.A.No.813 of 2015 to the 3 plaintiffs of O.S.Nos.505 & 238 of 2010 & 482 of 2012 each Rs.1000/-, within 15 days from the date of

¹ AIR 1988 SC 618

² AIR 1994 SC 2562

receipt of the order and to carry the amendment with consequential amendment and with a direction to the trial Court to club all suits for common disposal by recording common evidence in O.S.No.482 of 2012 and give preferential disposal within five months from the date of receipt of this order.

11. Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 08.11.2016

Note: Issue C.C. by two days

(B/o)

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