

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3733 of 2016

ORDER:

1) Assailing the order dated 21.07.2016 passed in I.A.No.449 of 2016 in O.S.No.234 of 2010 on the file of the Additional Senior Civil Judge, Tirupati, wherein an application filed Under Order XXIII Rules 1, 3 (b) and Section 151 of C.P.C. seeking permission of the Court to withdraw the suit was rejected, the present revision is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

3) The petitioner/plaintiff filed O.S.No.234 of 2010 seeking division of the plaint schedule property into two equal shares with metes and bounds and to allot one such share to the plaintiff. The plaintiff and defendant are brothers and the suit schedule property originally belonged to Ugranam Elaiah and Ugranam Guruswamy, who are the sons of late Ugranam Budda Reddy. The said Ugranam Elaiah and Ugranam Guruswamy executed registered gift settlement deeds in favour of the plaintiff and defendant vide document Nos.780 of 1984 and 781 of 1984 respectively, settling each one half of the un-divided plaint schedule property. Since then both the plaintiff and defendant are in joint possession and enjoyment of the said property. The revenue authorities also issued pattadar pass book and title deeds. The Plaintiff cultivating his half of the plaint schedule property by raising sugarcane, paddy and other crops, where as the defendant

leased out his half share to one Kapuveedi Venkatrayalu. Due to misunderstandings, the said K.Venkatarayulu is not allowing the plaintiff to enjoy his share of property and is causing trouble. It is averred that though the plaintiff and defendant got the plaint schedule property by way of registered gift settlement deeds without specific boundaries for respective shares, both of them having equal rights in the said property with good and bad qualities. The averments in the plaint also show that as the defendant is trying to alienate the joint property to the third parties by knowing the right of the plaintiff, he filed the present suit for partition.

4) Written Statement came to be filed opposing the same. It is stated in the written statement that as the properties are already divided and as the plaintiff was a party to the registered partition deed which was executed on 17.03.1993 it is not open for the plaintiff to claim any share with false and baseless allegations. It is said that suppressing the fact of purchase of properties in the name of wife and son, the plaintiff filed the suit. It is the case of the defendant that the plaintiff was never in joint possession and enjoyment of the property as alleged and that he has nothing to do with the plaint schedule property. Since the properties are already divided and as all the branches have been exercising absolute rights over the same, the plaintiff is estopped by his own conduct, admission and also deeds to contend that the properties are not yet divided. The revenue department also

recognized legal possession and enjoyment of the branches and granted pattadar pass books and title deeds.

5) Pending the said suit the petitioner/plaintiff filed an application to withdraw the suit on the ground that has not included all the properties of the family and also other co-parceners as parties.

6) A counter came to be filed opposing the same. It is however stated in the counter that the defendant filed his written statement in the year 2010 itself referring to the registered partition deed between the plaintiff, defendant and other brothers but no action is taken then. It is further stated that since the division of the properties came to be registered under registered partition deed, the question of permitting the petitioner to withdraw the suit at this point of time would not arise.

7) After considering the rival submissions the trial Court rejected the said application. Challenging the same the present revision came to be filed.

8) Learned counsel for the petitioner mainly contended that all the properties which are sought to be partitioned are not referred to in the schedule and as the other brothers are not added as parties seeks withdrawal of the suit with a liberty to file a fresh suit.

9) On the other hand, learned counsel for the respondent opposed the same contending that since the properties are already partitioned by way of registered partition deed further division of the properties would not arise and the permission as sought for cannot be granted.

10) Under Order XXIII Rule 1 of C.P.C. a suit can be permitted to be withdrawn with a liberty to file a fresh suit if any of the two circumstances referred in sub-clauses (a) and (b) exists, namely 1) that a suit must fail by reason of some formal defect or (2) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim. Whenever such an application is made, the Court should keep in mind whether the plaintiff has satisfied either of the two conditions referred to in order XXIII Rule 1 (3) (a) and (b) C.P.C. The Court cannot go into the merits of the case or insist on proving the said plea. It is always open for the plaintiff to establish his plea by adducing the evidence in freshly instituted case. As stated earlier the Court needs to be satisfied is whether the suit is suffered from formal defect or there are sufficient grounds for allowing the plaintiff to file a fresh suit.

11) In *Pillakathuku Subbarathnam and another v. Executive Officer, Polathala Mallewaraswamy Temple, Kadapa and others*¹ the expression “sufficient grounds” came up for

¹ (2005) 5 ALD 75

consideration. After considering all the authorities on the subject this Court held as under:

“The expression “sufficient grounds” may have to be considered liberally depending upon the facts and circumstances of a given case. In view of the peculiar facts and circumstances when specific ground had been taken relating to the defective pleading and defective reliefs prayed for, this Court is of the considered opinion that it would be just and proper to permit the revision petitioners to withdraw the present suit with a liberty to institute a fresh suit, if so advised in relation to the subject matter of the suit or to the part of the claim of the said suit.”

12) In the instant case, the contents of the affidavit filed in support of the petition is silent as to the properties which are to be added to the schedule mentioned in the suit and also the names of the persons/co-parceners, who are to be shown as respondents. However, in the counter it has been mentioned that there was a partition between the petitioner, defendant and other brothers. It is also to be noted that though the defendant pleads existence of registered partition deed, the plaintiff nowhere admits about its existence. Things would have been different had the registered partition deed been filed before the Court. Except an assertion no effort was made to produce the said document before this Court. Apart from that, the record also discloses existence of brothers, other than the defendant. Hence, this Court is of the view that the case of the petitioner falls under sub-clause (b) of Rule 1 (3) of Order XXIII C.P.C.

13) For the aforesaid reasons, the Civil Revision Petition is allowed, permitting the petitioner to withdraw O.S.No.234 of 2010 on the file of the Additional Senior Civil Judge, Tirupati, with a liberty to file a fresh suit. There shall be no order as to costs.

14) Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

29.12.2016

gkv

