

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.846 of 2011

ORDER :

This Revision is filed challenging the Order dt.01.02.2011 in I.A.No.659 of 2010 in O.S.No.704 of 2002 on the file of Principal Junior Civil Judge, Chittoor.

2. The petitioner herein is defendant in the above suit.

3. The respondent/plaintiff filed the suit against petitioner for a perpetual injunction restraining petitioner from interfering with his peaceful possession and enjoyment of suit schedule property.

4. In the plaint, the respondent contended that he is the absolute owner of plaint schedule property which he obtained under an oral partition between himself and respondent. He also relied on title deed and ryot pattadar passbook issued by Government.

5. Written statement was filed disputing the suit claim.

6. Issues were framed, and trial commenced.

7. The defendant also entered the witness box. Some of the plaintiff's witnesses were also examined.

8. At that stage, in the year 2010, the respondent filed I.A.No.659 of 2010 seeking leave of court to file a

rejoinder raising a new plea that the property was obtained by him under a registered Will executed by his father. He alleged that by mistake and oversight this could not be mentioned in the plaint and that he was under a fond hope that the pattadar passbook and title deed granted by Government would be sufficient to prove his possession, and that subsequently at the time of preparation for trial, he decided to file this application.

9. This application was opposed by petitioner denying the said Will and also taking a plea that there was no mistake or oversight by respondent. It is pointed out that written statement was filed in October, 2002 denying the oral partition and that respondent had even admitted in cross-examination that there was no partition between him and petitioner even prior to the death of father of respondent and even now; and that the application for seeking leave to file rejoinder was filed eight years later.

10. By order dt.01.02.2011, the Court below allowed the said application stating that the proposed rejoinder did not change the nature of the suit nor it did introduce any new case, and would not cause any prejudice to petitioner.

11. Challenging the same, the present Revision is filed.

12. Heard Ms. M. Madhavi Priya, counsel for petitioner, and Smt. C. Jhansi Rani, counsel for

respondent.

13. From the facts narrated above, it is clear that there was no plea raised in the plaint about the Will executed by respondent's father in 1980, and this plea was raised for the first time in the rejoinder filed eight years after the suit was filed.

14. Normally, such pleas would be raised by filing an application for amendment of a plaint, but such amendments to plaint would not be considered in view of the proviso to Order VI Rule 17 C.P.C. which restricts applications for amendment of plaint after the trial has commenced. That being the legal position, the said bar cannot be circumvented by filing a rejoinder since what is directly prohibited cannot be allowed to be done indirectly.

15. Moreover, the Court below is not correct in stating that a new case is not being introduced by respondent, inasmuch as the plea regarding the Will was not there in the plaint filed by respondent, and is introduced for the first time in the rejoinder.

16. Therefore, the impugned order cannot be sustained and it is accordingly set aside; and I.A.No.659 of 2010 in O.S.No.704 of 2002 on the file of Principal Junior Civil Judge, Chittoor is dismissed. Accordingly, the Civil Revision Petition is allowed. No order as to costs.

17. Since the suit is of the year 2002, the Court below is directed to decide the suit as expeditiously as possible

preferably within a period of six (06) months from the date of receipt of a copy of the order.

18. As a sequel, miscellaneous petitions pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-02-2016

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