

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.6612 OF 2012

ORDER:

Heard the learned counsel for petitioners and the learned counsel for respondent.

2. The petitioners herein are defendants in O.S.No.452 of 2007 on the file of the Court of the Additional Senior Civil Judge, Kurnool (for short, trial Court). The respondent herein filed the said suit seeking partition and separate possession of plaintiff's half share in the plaint schedule property. For the sake of convenience, the parties shall be referred to as they are arrayed in the suit.

3. A written statement was filed by the defendants. After framing the issues and completion of evidence of the plaintiff, the plaintiff filed I.A.No.1677 of 2011 seeking impleadment of Golla Anjanamma and Golla Ramulamma as defendants 3 and 4 in the suit and for making amendment to the plaint. The said application was opposed by the defendants. However, when the application was allowed, by order of the trial Court dated 05.11.2012, the present Civil Revision Petition was filed by the defendants.

4. The case of the plaintiff is that she is the only daughter of G.Chinna Seshi Reddy and G.Giddamma who are no more. The second defendant is the second wife of said G.Chinna Seshi Reddy and the first defendant is her son. It is also stated in the plaint that said G.Chinna Seshi Reddy married the second defendant during the life time of G.Giddamma and the first defendant was born to them. G.Giddamma died on 10.10.2006, and after her death, the plaintiff and the defendants were in joint possession and enjoyment of the property left by said G.Chinna Seshi Reddy. In respect of half share of the said G.Giddamma, she executed a Will in favour of the plaintiff on 29.07.2006. In spite of giving half share to the plaintiff, the defendants

have obtained pattadar passbooks and title deeds in respect of the entire property. She also issued a notice on 05.07.2007 to the defendants claiming half share and submitted a representation to the Revenue Divisional Officer, Kurnool to cancel the pattadar passbooks and title deeds.

5. Now the present application i.e., I.A.No.1677 of 2011 is filed stating that the marriage of the second defendant, during the lifetime of the mother of the plaintiff, was an invalid marriage and the first defendant is an illegitimate child. Besides the first defendant, there are two other children born to said G.Chinna Seshi Reddy, who are proposed defendants 3 and 4. In view of the illegitimacy of marriage and birth of children, they are not entitled for any share and the entire property devolves upon the plaintiff.

6. A counter was filed by the defendants stating that though the original suit is filed for partition, now by way of present amendment, she seeks recovery of possession which is not permissible. The entire nature of the suit is changed. It was further stated that the plaintiff executed a relinquishment deed on 20.06.1988 in favour of the first defendant and thus she lost right, title and interest over the entire plaint schedule property. It was also stated that under the Hindu Succession Act, the illegitimate children are also entitled to the property as they are treated as co-parceners.

7. The trial Court, by its order dated 05.11.2012, allowed the application with the following observations.

“6. Though in the plaint the word bigamous and invalid marriage are not specifically mentioned, it is clearly explained that during the life time of plaintiff's mother her father married defendant No.2 and gave birth to defendant Nos.1, 3 and 4. The only new fact sought to be introduced is nature of property. For the mistakes made by the advocates parties cannot be penalized... The nature of property has to be decided on full fledged trial in the suit. On the same set of facts by changing the nature of property plaintiff now sought for entire property instead of half share claimed earlier on pure question of law that in

ancestral property illegitimate children cannot have any share.

7. Mere allowing amendment doesn't mean accepting the plea now itself. If ancestral nature of property is not proved ultimately, the property would be dealt with in accordance with law which deals with succession of male Hindu leaving behind self acquired property. But for mere raising the plea of ancestral property and seeking recovery of possession, if plaintiff is driven to file another suit it leads to multiplicity of suits. Further the purport of all the Apex Court decisions are to the effect that courts must be extremely liberal in allowing the amendments. Though the relief itself is changed from the suit for partition into recovery of possession, since the cause of action is based on the same set of facts only with improvement of nature of schedule property, no serious prejudice would be caused to the case of the respondents/defendants. On allowing the application, respondents would be given right to file additional written statement. Hence for the all aforementioned reasons in the interest of justice court is inclined to allow the IA."

8. The only ground that was raised in the affidavit filed in support of the present application was that the original plaint was drafted by a junior Advocate and he omitted to bring the daughters of the second defendant on record.

9. The Supreme Court in **Ram Niranjan Kajaria v. Sheo Prakash Kajaria** ^[1] specifically laid down that admissions made in the pleadings cannot be permitted to withdrawn by way of amendment, but application can be made for explaining/clarifying the admissions made therein. In the present case, the proposed amendments are contrary to the pleadings in the original plaint. The proposed amendments are not sought for clarifying the earlier pleadings.

10. In the circumstances, the order passed by the trial Court in I.A.No.1677 of 2011 dated 05.11.2012 is irregular and is accordingly set aside. The Civil Revision Petition is, accordingly, allowed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAMALINGESWARA RAO, J

Date: 28.01.2016
TJMR

[\[1\]](#) (2015) 10 SCC 203