

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4806 OF 2014

ORDER:

At the stage of admission, this Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioners/plaintiffs is directed against the orders dated 28.02.2014 of the learned Senior Civil Judge, Chirala passed in I.A.no.700 of 2012 in O.S.no.108 of 2007 filed by them under Order I Rule 10 (2) read with Section 151 of the Code of Civil Procedure, 1908 ('the C.P.C.' for brevity), requesting to accord permission to amend the plaint by adding Item no.5 to the schedule of the plaint in the suit for partition.

2. I have heard the submissions of the learned counsel for the revision petitioners/plaintiffs ('the plaintiffs', for brevity) and I have perused the material record.

3. In the suit for partition when the aforementioned application was filed by the plaintiffs, the 1st defendant filed a counter and the same was adopted by defendants 3, 6, 7 and 8 resisting the application of the plaintiffs. The trial Court, without going into the merits of the matter, dismissed the petition having taken note of the fact that the petition was filed under Order I Rule 10 (2) of the CPC and that the said provision of law is not applicable to the relief claimed in the petition.

4. At the hearing, the learned counsel for the revision petitioners/plaintiffs would submit that this application is filed prior to the commencement of the trial and that by now the suit is part-heard and makes a request to remit the matter to the trial Court with a direction to dispose of the application on merits as the law is well settled and that the Court can apply the correct provision of law and

grant the relief, if the facts of the case so warrant.

5. Having regard to the submissions, this Court is satisfied that this revision can be disposed of at the stage of admission with appropriate directions.

6. Accordingly, the Civil Revision Petition is allowed. The order impugned is set aside and I.A.no.700 of 2012 in O.S.no.108 of 2007 on the file of the Senior Civil Judge, Chirala is remitted to the trial Court with a direction to dispose of the same afresh in strict accordance with the procedure established by law giving liberty to the petitioners/plaintiffs to seek amendment of the provision of law in the said interlocutory application. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M. SEETHARAMA MURTI, J

Date: 08.07.2016

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