

HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No. 3346 OF 2016

ORDER:

Plaintiffs in O.S.No.61 of 2008 on the file of the Court of the learned Senior Civil Judge, Hindupur, Ananthapur District, are the petitioners in the present revision filed under Article 227 of the Constitution of India.

Heard the learned counsel for the petitioners, Sri Mahadeva Kanthrigala, Sri P. Narahari Babu for the respondents and perused the material available before the Court.

The petitioners herein instituted the above suit against the respondents herein for partition and separate possession. In the said suit, after conclusion of the evidence and when the suit was coming up for arguments, the present application vide I.A.No.238 of 2016 was filed by the plaintiffs/petitioners herein under the provisions of Order VI Rule 17 C.P.C., praying for amendment of the plaint. Resisting the said application, counter was filed by respondent Nos.1 and 2. The learned Senior Civil Judge by way of an order, dated 15.06.2016, dismissed the said application. The validity and the legal sustainability of the said order is under challenge in the present revision.

It is contended by the learned counsel for the petitioners that the order under challenge is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order VI Rule 17 C.P.C. It is submitted that the proposed amendment would not change the nature nor it affects the basic structure of the suit and on the other hand, the same would help the Court to arrive at just conclusion. It is also submitted that the Court below erred in dismissing the application on the ground that the same being a belated one. Learned counsel, in support of his arguments, placed reliance on the judgment of the Supreme Court in

Abdul Rehman and another v. Mohd. Ruldu and others¹ and the judgments of this Court in **Sanapala Ramanujulu @ Ramanuja Charyulu v. Sanapala Sridharudu (died) and others²** and **Perim Janardhana Rao v. Malepati Balaji and others³**.

On the contrary, it is submitted by the learned counsel for the respondents that there is no illegality nor there exists any infirmity in the impugned order and since the Court below assigned valid and convincing reasons for arriving at the conclusion, the order passed by it is not amenable for any judicial review under Article 227 of the Constitution of India.

There is absolutely no dispute that when the matter was coming up for arguments, the plaintiffs/petitioners herein filed the present application. As observed by the learned Judge in the impugned order, after the death of the 3rd defendant in the suit, the petitioners filed I.A.No.586 of 2014 to bring the 4th defendant on record as legal representative of the 3rd defendant and the same was allowed on 12.11.2014. The fact remains that the petitioners herein did not pray for any consequential amendment in the said I.A., as rightly observed by the learned Judge. No cogent explanation is forthcoming from the petitioners as to why they did not pray for the said consequential relief in the earlier application. A perusal of the proposed amendment also shows that there is no clarity in the proposed amendment and the same does not explain the earlier pleading correctly.

In the course of arguments, it is submitted by the learned counsel for the petitioners that in view of the dismissal of the present application, the Court below may not consider about the allotment of shares after the death of the 3rd defendant. There is absolutely no basis for the said apprehension. It is also submitted by the learned counsel that the observations made in the impugned order may also show

¹ 2012 (6) ALT 41 (SC)

² 2014 (3) ALT 55

³ 2015 (2) ALT 649

effect on the final adjudication of the suit. In the absence of any clarity in the proposed amendment sought, this Court is not inclined to meddle with the order passed by the Court below.

Having regard to the facts and circumstances of the case, the judgments sought to be pressed into service by the learned counsel for the petitioners do not render any assistance to the petitioners.

For the aforesaid reasons, the revision is dismissed. However, the Court below shall dispose of the suit uninfluenced by the observations made either in the impugned order or in the present order.

Miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Date: 02.12.2016
ES



A.V. SESA SAI, J