

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.5585 OF 2015

ORDER:

The Civil Revision Petition is filed against the order dated 14.09.2015 passed in I.A. No.760 of 2014 in O.S. No.216 of 2007 on the file of II Additional Senior Civil Judge, Warangal.

2) Heard learned counsel for the revision petitioner and learned counsel for the respondents. Perused the material on record.

3) The revision petitioner is the 5th defendant in O.S. No.216 of 2007. I.A. No.760 of 2014 is filed by the 3rd defendant under Order VI Rule 17 C.P.C for amendment of written statement-cum-counter claim. The lower Court allowed the petition on 14.09.2015 permitting the 3rd defendant to file additional written statement by way of the alleged counter claim to include the property of deceased defendant No.7 i.e., mother of plaintiff and defendants 1 to 7.

4) The said suit is filed for partition between the plaintiff and defendants with regard to the property belonging to their late father, for plaintiff and defendants, thereby, all are class-I legal heirs of him under Section 8 of Hindu Succession Act, 1956. Undisputedly, during the pendency of suit, the mother of plaintiff and defendants i.e., defendant No.7 died intestate. The 3rd defendant has sought amendment of the written statement to include the property of his mother, in the form of counter claim.

5) Undisputedly, it is a subsequent event. Now it is the plea of the plaintiff and some of the defendants, particularly of defendant No.6, who is sister of the plaintiff and defendants 1 to 5, defendant No.7 since died, that her mother gifted the property to her, thereby, her property since gifted is not liable to be included in the suit lis to claim as if partible property.

6) As it is a matter of fact in dispute and finding is required as to there is a gift and validity of the gift, which was from the mother of the parties, as defendant No.7 who died intestate, that is also to be included as part of the properties instead of driving to file another suit and when such an amendment as an additional pleading even within the scope of Order VIII Rule 9 C.P.C do not strictly under Order VI Rule 17 from mere quoting of wrong provision not fatal, apart from that, in a suit for partition, when all are entitled to the relief of partition for respective separate shares even the defendants on par with the plaintiffs, there is no question of any counter claim but for to say from the joint possession already suit relief included as in joint possession under Section 34 of the Court Fees Act, 1956 for payment of fixed court fee, the said item is also to be included, if any the trial Court has to do and thereby what the lower Court ordered no way requires interference by this Court while sitting in revision but for to say the amendment no way prejudice any of the rights of the parties to decide the lis on its own merits.

7) Accordingly, the revision is dismissed. No order as to costs.

8) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.17.09.2016
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