

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4434 of 2013

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioners/plaintiffs is directed against the order dated 03.06.2013 of the learned Senior Civil Judge, Sanga Reddy, passed in I.A.No.479 of 2012 in O.S.No.398 of 2007 filed under Order VI Rule 17 of the Code of Civil Procedure, 1908, requesting to permit the plaintiffs to amend the plaint by including items 24 to 65 mentioned in the petition list in the suit claim/ plaint schedule.

2. I have heard the submissions of *Sri B.Vijaysen Reddy*, learned counsel appearing for the revision petitioners/plaintiffs (hereinafter, 'plaintiffs') and *Sri M.Rajamallu Reddy*, learned counsel appearing for the respondents/ defendants (hereinafter, 'defendants'). I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The plaintiffs brought the suit for partition of the plaint schedule properties, i.e., items 1 to 23, which are mentioned in the plaint schedule. The plaintiffs are claiming a 1/8th share in the said items of plaint schedule property. Some of the defendants having filed written statements are contesting the suit. While so, the plaintiffs filed the present application for amendment of the suit claim/ plaint schedule to enable them to claim partition of some more properties, i.e., the proposed items 24 to 65 mentioned in the petition list. Their specific case is that at the time the suit was filed, they could not secure the details of all the joint family properties available for partition, but, recently they obtained certified copies of pahanies in respect of the proposed plaint schedule properties situated at Pothireddypally village, Malkapur village and Kothalapur village, which are also ancestral properties and

which are liable for partition. Since they did not have better particulars of these lands at the time of institution of the suit, these properties could not be included in the original plaint schedule and the plaint claim. Hence, it has become necessary for them to seek amendment of the plaint for addition of the other proposed items of properties, which are also liable for partition, in the suit claim and plaint schedule and seek partition of the same.

3.1 The 1st and 4th respondents/ defendants resisted the application of the plaintiffs by filing counters. Their contentions as per the submissions in the counter and the submissions made before this Court are as follows: 'The proposed items of properties are not available for partition. The said properties are not ancestral properties of the family. The present application for amendment is filed five years after the institution of the suit. The 1st and 4th defendants have also filed their written statement disputing the claim of the plaintiffs in the suit. Further, the plaintiffs failed to mention the values of various items of the proposed properties and also the Court fee payable on the additional claim for partition. Unless the values of the said proposed items of properties are mentioned in the proposed amendment, even if no further court fee is payable, the Court will not be in a position to ascertain the total value of the share of the plaintiffs in all the plaint schedule properties including the proposed plaint schedule properties. Unless the total value of the share of the plaintiffs in all the properties including the proposed items of properties is ascertained, the issue as to whether the trial Court would continue to have the pecuniary jurisdiction to entertain the suit cannot be decided. This aspect is necessary to be decided while allowing the amendment as in case, the amendment is permitted the Court would be required to return the plaint for presentation to proper Court, in case, the total value of the plaintiffs' share after including the value of their share in the proposed properties also. Therefore, it is the bounden duty of the plaintiffs to show in the proposed amendment not only the valuations of the proposed items of properties but

also the value of the plaintiffs' share in the said proposed items to enable the trial Court to ascertain as to whether the Court would continue to have pecuniary jurisdiction to entertain the suit for partition, in case the proposed amendment is allowed. The plaintiffs did not furnish the boundaries of the proposed items of the properties. The said extents covered by the proposed items of properties are also not full extents. Therefore, without furnishing the complete details of the proposed properties which are to be included in the plaint schedule, the plaintiffs cannot be permitted to amend the plaint.

4. Per contra, the contentions of the plaintiffs before this Court are that as per the provision of Order VII Rule 3 of the code, the plaintiffs are required to furnish sufficient details like survey numbers for identifying the suit schedule property and that there is no mandate of law that the boundaries of the properties shall be furnished; the family properties are identifiable with the help of survey numbers only and that there is no need to furnish the boundaries as per facts and also the legal requirement.

5. Be that as it may, the Court below dismissed the application of the plaintiffs.

6. Having regard to the facts and the contentions, this Court is of the view that this revision need not detain this Court for long. Though it appears *prima facie* that the amendment of the plaint schedule can be permitted in the facts and circumstances, however, as the plaintiffs failed to seek the necessary other consequential amendments in the application and failed to furnish the valuations of the proposed items of the plaint schedule properties and also failed to state the values of the shares of the plaintiffs in the proposed items of the plaint schedule properties, the matter requires to be remitted to the trial Court for fresh consideration to give an opportunity to the plaintiffs to file a fresh application for the same relief after fulfilling the factual and legal requirements.

7. On the above analysis, this Court is of the opinion that the revision petition can be disposed of with certain directions.

8. In the result, the Civil Revision Petition is allowed and the impugned order is set aside and the petition for amendment filed by the plaintiffs is dismissed for not seeking the consequential amendments. However, to meet the ends of justice, the plaintiffs are given an opportunity to file a fresh comprehensive application for the same relief by seeking all consequential amendments, particularly with regard to the valuations of the proposed items to be included in the plaint schedule property as well as the value of the shares of the plaintiffs in the said properties.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

23rd December, 2016
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