

HON'BLE SRI JUSTICE S. RAVI KUMAR

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CIVIL REVISION PETITION No.2002 of 2016

ORDER:

This Civil Revision Petition is preferred questioning order dated 01.02.2016 in I.A.No.1284 of 2015 in O.S.No.36 of 2015 on the IV Additional District Judge, Kadapa, Y.S.R.District.

2. The revision petitioners herein are plaintiffs, who filed suit for partition of plaint schedule properties into 10 shares and allot 5 shares to them. In that suit, they filed above referred I.A.No.1284 of 2015 seeking amendment of plaint in respect of shares due to death of defendant Nos. 1 and 5. The said application was dismissed on the ground that the suit is at the stage of arguments and amendment cannot be permitted at that stage, as there are no justifiable grounds to consider request of plaintiffs. Now, questioning the same, present revision is preferred.

3. Advocate for revision petitioners submitted that on account of death of defendant Nos. 1 and 5, now plaintiffs would get 1/8th share each instead of 1/10th share and to that extent only amendment is sought and for that no prejudice will be caused to the opposite parties and the trial Court without considering the request of plaintiffs, dismissed the application mainly on the ground that it is filed at the stage of arguments.

4. Advocate for respondents submitted that plaintiffs along with this application filed a petition to reopen the case and that was also dismissed but no revision is preferred against that and this application is filed only to protract the case, which is of the year 2007.

5. I have perused material papers and the impugned order dated 01.02.2016.

6. Admittedly, the suit is filed for partition and at the time of passing of preliminary decree, the Court has to determine shares of the parties

basing on the evidence and pleadings. Here, admittedly, defendant Nos. 1 and 5 died during pendency of suit and legal representatives were already on record and no new parties are added due to the death of these two persons i.e., defendant Nos. 1 and 5. In such case, at the time of judgment the Court has to necessarily determine the shares, taking the parties available at that time who are entitled for share in the plaint schedule properties and it is not necessary for plaintiffs to seek amendment of shares due to death of these two persons. As the suit is at the stage of arguments plaintiffs can urge this point with regard to change of shares on account of death of two of the sharers. Therefore, I am of the view that revision can be disposed of directing the trial Court to consider the fact that legal representatives of deceased two persons were already on record at the time of allotting shares while passing preliminary decree, by giving liberty to plaintiffs to urge this point.

7. With the above said observations, this Civil Revision Petition is disposed of at the admission stage.

8. Miscellaneous Petitions, if any, shall stand closed.

S. RAVI KUMAR, J

Date: 18-07-2016.

Note:

Issue C.C. in three (3) days.

B/o.

pab