

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.46 of 2016

ORDER :

This revision is preferred questioning order dated 03.11.2015 in I.A.No.1760 of 2013 in O.S.No.594 of 2007 on the file of Principal Junior Civil Judge, Sanga Reddy, Medak District.

2. Revision petition herein is plaintiff No.2, who filed I.A.No.1760 of 2013 seeking amendment of plaint by adding item Nos.1 to 3 to the plaint schedule. According to revision petitioner, the suit was filed for partition in respect of land in Sy.No.62/A admeasuring Ac.8.19 gts. situated at Gollapally Village, Kondapur Mandal, Medak District, claiming 1/6th share to each plaintiff. Defendants filed I.A.No.1108 of 2011 under Order VIII Rule 6 C.P.C. seeking inclusion of land in Sy.No.143/2 in an extent of Ac.2.28 gts. acquired by late Smt.Butchamma, mother of plaintiffs, through her father Radhaiah, who died intestate leaving mother of plaintiffs Buchamma and late Malla Goud. It is contended that the proposed properties to be included are shown as 'B' schedule and they originally belong to Radhaiah, maternal grand father of plaintiffs, therefore, all his properties have to be included. This application was resisted by defendants contending that these properties went to the share of late Malla Goud, who executed a registered gift deed in favour of defendant

No.1, therefore, they cannot be included in the suit as they are not available for partition. On these contentions, the Court below dismissed the application holding that on the death of Radhaiah succession commenced and Malla Goud acquired

Ac.7.37 gts. of land in several survey numbers and became absolute owner and as such, those properties cannot be brought within the present suit therefore application seeking amendment is not permissible. Now, aggrieved by the same, present revision is preferred.

3. Learned advocate for revision petitioner submitted that trial Court observation plaintiffs have no right to the land in Sy.No.143/2 is incorrect. It is submitted that the property belongs to Buchamma, mother of plaintiffs, therefore, all the properties of Buchamma are liable for partition. It is further submitted that the learned trial Judge has not properly exercised the discretion in deciding the rights of parties and no prejudice will be caused to the opposite party if these properties are included.

4. On the other hand advocate for respondents submitted that in the plaint there is no pleading with regard to properties of Radhaiah and in the family pedigree name of Radhaiah is not at all referred therefore present amendment will completely change the cause of action and the pleadings and the trial Court has rightly dismissed the application and that there are no grounds to interfere with the same.

5. Now the point that would arise for my consideration in this revision is:

Whether the order in I.A.No.1760 of 2013 in O.S.No.594 of 2007 on the file of Principal Junior Civil Judge, Sanga Reddy, is legal, proper and correct?

-

POINT :

6. I have perused the material papers including the impugned order and the plaint copy as produced by respondent counsel. As seen from the plaint, plaintiffs claimed property through Kishta Goud and only property claimed in the plaint is in respect of Sy.No.62/A admeasuring Ac.8.19 gts. Now, the application is filed by plaintiff No.2 only because defendants sought for inclusion of land in Sy.No.143/2 to an extent of Ac.2.28 gts. belonging to mother of plaintiffs, by name Buchamma. Now, plaintiffs contended that the properties of Radhaiah, from whom this Buchamma got the properties, are to be included. The trial Court on a consideration of plaint pleadings and family pedigree given in the plaint has not accepted the contention of plaintiffs and dismissed the application. On a scrutiny of the material, I do not find any wrong in the order of trial Court nor there is any jurisdictional error as contended by revision petitioner. From the pleadings of the plaint the claim is only in respect of Ac.8.19 gts in Sy.No.62/A and as per family pedigree claim is through Kishta Goud and there is no reference about the names of Radhaiah or

Buchamma in the plaint. As rightly objected by advocate for respondents/defendants, the amendment is not to substitute the original pleadings or to put-forth a new case. As rightly pointed out, proposed amendment would amount to putting altogether a new case even changing the family pedigree as pleaded originally. Considering these aspects, I am of the view that trial Court has not committed any error and rightly dismissed the application and that there are no grounds to interfere with the orders of the lower Court.

7. Accordingly, revision is dismissed.

8. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

3rd March 2016.

mar