

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.No.1016 OF 2016

ORDER:

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This revision is filed against the order, dated 18-11-2015, passed in I.A.No.980 of 2015 in O.S.No.12 of 2010, wherein the Court below dismissed the application filed by the petitioner/plaintiff for amendment of plaint by inserting the prayer by adding para No.3-A in the plaint as under:

“ To add as para No.3-A in the plaint after para No.3:

The defendant No.3 is having 1/3rd share in the plaint schedule property.

But she has not a party to the agreement of sale, as such she is having 1/3rd share in the plaint schedule property. As per provision of Specific Relief Act Vendee under the agreement of sale cannot only seek for specific performance of agreement of sale and also seek for the relief of the partition and also for possession and delivery of property. As the defendants 1 to 3 in joint and constrictive possession of the plaint schedule property in 2/3rd share of defendants 1 and 2 in the boundaries mention in the agreement of sale. The property divided into 3 shares out of that 2 shares of the defendants 1 and 2 of the property mentioned in the agreement of sale is for specific performance, partition and deliver of the same to the plaintiff. Since the plaintiff seeking relief of partition and delivery of property along with the specific performance of agreement of sale.

2. To add as para No.9-A in the plaint after para No.9:

Since the plaintiff seeking the relief of partition and possession of land to an extent of Ac.1-00 cents from defendants 1 and 3 for which defendants 1 to 3 are joint and constructive possession of the property for undivided of 2/3rd share a Court fee of Rs.200/- is paid u/sec.34 (2) of A.P.C.F.Act.”

But the trial Court dismissed the I.A. on the ground that there is no prayer for the relief of partition and separate possession and the same is not pleaded in the affidavit clearly for the relief of partition and separate possession and the trial Court found that the amendment portion is defective and is not conveying any proper meaning and dismissed the application.

Learned counsel for the petitioner submits that since admittedly the property is joint family property and

3rd respondent will have share in it and as such, the relief of partition is sought amendment of plaint.

A reading of the order of the trial Court and the amendment sought by the petitioner goes to show that the relief of partition is not asked for and in view of the same, I do not see any error or infirmity in the order passed by the trial Court. However, it is open to the petitioner to make fresh application as per law, if the

petitioner so advised.

With the above observation, the revision is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in this revision, shall stand closed.

A.RAJASHEKER REDDY,J

26-02-2015
nvl