

HON' BLE SRI JUSTICE G. SHYAM PRASAD

Civil Revision Petition No.877 of 2017

ORDER:

This civil revision petition is arising out of the order dated 08.12.2016 passed in IA No.132 of 2016 in OS No.313 of 2010 on the file of the Senior Civil Judge, Parvathipuram, camp court at Vizianagaram.

2. The petitioners herein are the plaintiffs and the respondents herein are the defendants in OS No.313 of 2010. The suit was filed for partition of the plaint schedule property into seven equal shares.

3. During the pendency of the suit, the petitioners herein filed IA No.132 of 2016 under Order 6 Rule 17, Section 151 CPC read with Rule 28 of CRP, to permit them to make an amendment in the plaint. The respondents filed counter in the said petition denying the allegations made in the affidavit and petition.

4. The trial court, on consideration of the arguments on both sides and material available on record, dismissed the petition, mainly on the ground that as per the provisions of Order 6 Rule 17 CPC, the petitioners did not explain the reasons for not taking the proposed amendment before the closure of trial or immediately after filing the written statement of D.11 or at least when PW.1 was cross-examined on the same aspect.

5. The finding of the trial court shows that the petitioners did not take any steps to amend the plaint at various stages of suit,

though they had knowledge that the contents of the plaint are not sufficient to plead their case properly. The other reasons given by the trial court are that as the suit is coming up for arguments, the petition was belated to permit the petitioners to amend the plaint.

6. Sri N. Siva Reddy, learned counsel for the 11th respondent submits that the 11th defendant has purchased the plaint schedule property from defendants 1 and 2 believing that they are the *kartas* or managers of the family. The defendants 1 to 10 and the plaintiffs have colluded together and filed the partition suit to defeat the sale deed executed by defendants 1 and 2 in favour of the 11th defendant. It is further submitted that the trial court has rightly dismissed the application filed for amendment of the plaint. It is further submitted that the amendment of the plaint is not required, as they have already stated the same facts before the court and it has come in their evidence and they are not supposed to change those facts by way of amendment.

7. No doubt, it may be a fact that the evidence of both sides has been recorded by the trial court and the matter is at the stage of arguments. However, learned counsel for the revision petitioners submits that the petitioners wanted to correct the facts, which are incorrectly mentioned in the evidence of the witnesses and some facts with regard to shares of the parties have also not correctly stated and some facts which are not mentioned at all in the plaint and hence they are seeking amendment of the plaint. He further submitted that the amendment is not going to

change the nature of the suit and that the petitioners are not going to adduce any further evidence in respect of the amendment sought to be made to the plaint. He further submits that this is only for the purpose of clarification with regard to age, shares and relationship of the parties and the revision petitioners are not inclined to adduce further evidence in respect of this amendment.

8. On consideration of the arguments of both sides, it is obvious that the plaintiffs have filed a suit for partition against defendants 1 and 2. Defendants 1 and 2 are the sons of the 1st plaintiff. Defendants 3 to 10 are said to be supporters of 11th defendant. However, on consideration of the material available on record, for effective adjudication, the facts must be brought on record.

9. Learned counsel for the respondent No.11 submits that the admission made by the parties in their evidence shall not be contraverted by the proposed amendment which is sought by the plaintiffs.

10. In view of the foregoing reasons, the impugned order dated 08.12.2016 passed in IA No.132 of 2016 in OS No.313 of 2010 is set aside. Consequently, the amendment petition is allowed and both parties are directed to get ready for arguments after amending the plaint and submitting a copy of the plaint to the respondents. Considering the facts and circumstances of the case, the plaintiffs are permitted to amend the plaint only for the purpose of clarification of the facts and to bring a clear picture

about their case. It is made clear that in view of the representation of the counsel for petitioners that petitioners will not adduce any evidence, this amendment is allowed for clarification purpose.

11. With this observation, the civil revision petition is allowed, with a direction to the trial court to dispose of the suit OS No.313 of 2010 within one month from the date of receipt of a copy of this order. No order as to costs. Miscellaneous petitions, pending if any in this revision, shall stand closed.

Date: 22.02.2017.
BSS

G. SHYAM PRASAD, J

