

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.6486 of 2016

ORDER:

The order dated 14.12.2016 in I.A.No.379 of 2016 in O.S.No.120 of 2011 on the file of I Additional District Judge, Kadapa dismissing the petition of the defendants 1, 2 and 5 filed under Order VIII Rule 9 CPC is under challenge in the present CRP.

2) The 1st respondent/plaintiff filed O.S.No.120 of 2011 against the defendants who are his mother, brothers and sisters for partition of plaint schedule properties mainly on the strength of Will dated 04.10.2009 allegedly executed by his late father—K.Ramachandra Reddy in his favour. The defendants contested the suit taking the plea that Will is a fabricated one. While so, the defendants 1, 2 and 5 filed I.A.No.379 of 2016 under Order VIII Rule 9 CPC seeking permission of the Court to file additional written statement on the submission that several improvements took place after filing the suit and it was necessary for them to bring those facts to the notice of the Court by way of additional written statement.

3) The 1st respondent/plaintiff filed counter opposing the said petition contending that earlier the petitioners/defendants filed similar petition I.A.No.1391 of 2015 seeking permission to file additional written statement which was opposed by the 1st respondent/plaintiff; during the course of enquiry the Court pointed out that petitioners/defendants made derogatory remarks against the advocate in

the proposed additional written statement and directed the petitioners to file fresh additional written statement by deleting the unwarranted remarks; petitioners agreed and not pressed I.A.No.1391 of 2015, but again they filed the instant petition along with proposed additional written statement without any modification as directed by the trial Court and averments made in the proposed additional written statement were similar to the earlier additional written statement and hence the present petition is not maintainable. He further contended that pleadings mentioned in the present additional written statement were all false and frivolous and they were repetition of the original written statement as well as amended written statement already filed by the petitioners/defendants in the suit; further, the pleadings in the proposed additional written statement were not showing any material facts but they contain evidence to be let in by the defendants to oppose the Will propounded by the plaintiff and since the pleadings should contain only material facts but not evidence, petition is not maintainable on that ground also.

4) After enquiry, the trial Court dismissed the petition with the observation that petitioners have already filed their written statement and amended written statement and in the instant petition though they mentioned that several improvements took place after filing the suit, they did not mention in the affidavit about those improvements and hence petition was not maintainable.

5) Heard arguments of Sri K.R.Sasidharan Nair, learned counsel for petitioners and Sri P.Kamalakar, learned counsel for respondents and with their consent this CRP is disposed of at the admission stage.

6) The point for determination is:

“Whether there are merits in the CRP to allow?”

7) **POINT**: On a close scrutiny, I find impugned order does not suffer from any perversity, illegality or irregularity warranting the indulgence of this Court. As stated supra, the plaintiff who is the son of late Ramachandra Reddy, filed the suit for partition of plaint schedule properties on the pleadings that his late father executed Will dated 04.10.2009 bequeathing plaint schedule properties in his favour. He claimed partition against his mother, brothers and sisters. The defendants refuted the Will to be a forged one. From the impugned order it is evident that defendants in their written statement as well as amended written statement running 21 pages staunchly opposed the Will. Be that as it may, the defendants 1, 2 and 5 filed I.A.No.379 of 2016 under Order VIII Rule 9 CPC and sought permission to file additional written statement on the submission that after filing of the suit several improvements took place which necessitated them to bring to the notice of the Court by way of additional written statement.

a) The proposed additional written statement, as pointed by the trial Court, did not contain the alleged “*several improvements*” as mentioned in the affidavit. Conversely the proposed additional written statement

only contains the method and manner in which the defendants sought to prove the Will as forged one. Precisely, the proposed additional written statement is bereft of any material facts but fraught with the evidence to be let in the trial.

b) It should be noted that the purpose of filing the pleadings by the parties is to mention only the material facts. The material facts may contain either a claim of right in property or legal status or denial of such right or status. Such material facts would help the Court to concise the point of controversy so as to frame relevant issues which will guide the trial. In the pleadings the parties are not expected to mention or describe the evidence through which they propose to substantiate their respective pleas. More vividly, pleadings are like a blue print showing structure to be constructed. Whereas evidence is the material used for construction of structure such as clay, cement, bricks etc. As the blue print does not disclose the material to be used for raising the structure, so also pleadings do not exhibit the way the evidence will be adduced in trial.

c) In the instant case, as already noted, the proposed additional written statement does not contain any material facts or the so-called improvements occurred after filing the suit. It only contains the defendants' repeated plea of denouncing the Will and their attempt to show how the said Will was a forged one. Since denial aspect was already covered in the earlier written statement and amended written statement and rest of the pleadings are touching only evidentiary aspect,

the trial Court rightly dismissed the petition. I find no reason to differ with the decision of the trial Court.

8) Accordingly, this Civil Revision Petition is dismissed at the admission stage by confirming the order of the trial Court in I.A.No.379 of 2016 in O.S.No.120 of 2011. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dt. 06.01.2017
Murthy

U. DURGA PRASAD RAO, J

