

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISOIN PETITION Nos.3841 and 3952 of 2017

COMMON ORDER:

Since both these revisions are arising out of the same suit and between the same parties, they are taken up together, heard and being disposed of by this common order.

CRP No.3841 of 2017 is filed under Article 227 of the Constitution of India assailing the order dated 05.07.2017 passed by the XI Additional District Judge, Piler, in I.A.No.98 of 2017 in O.S.No.2 of 2013 whereby and whereunder the application filed by the petitioners herein under Order VIII Rule 9 and Section 151 of the Code of Civil Procedure (for short 'CPC') to receive the additional written statement, came to be dismissed.

CRP No.3952 of 2017 is filed under Article 227 of the Constitution of India assailing the order dated 05.07.2017 passed by the XI Additional District Judge, Piler, in I.A.No.110 of 2017 in I.A.No.98 of 2017 in O.S.No.2 of 2013 whereby and whereunder the application filed by the petitioners herein under Order VII Rule (3) A of CPC to receive certain documents by condoning the delay, came to be dismissed.

The case of the petitioners is that at the time when the matter was posted for further cross examination of P.W.1, it was noticed that the plaintiff has not arrayed the co-owners as a party to the suit. Since O.S.No.2 of 2013 is filed seeking partition of the properties, it was essential, just and necessary to implead the co-owners as parties to the suit. As such, the petitioners filed the impugned applications

seeking to receive the additional written statement and also the copies of 1-A and 1-B registers.

The respondents herein filed separate counters in both the IAs resisting the requests of the petitioners, contending that the main suit is posted for arguments and as such, the requests of the petitioners cannot be accepted at a belated stage. It was further contended that through out the proceedings, the petitioners never raised any objection about the non-joinder of co-owners and for the first time, that too after lapse of a decade, they came up with the said plea. They further contended that the present applications are filed only with a view to delay the proceedings. Thus, they prayed to dismiss both the applications with costs.

After hearing the arguments of both the counsel and perusing the material on record, the Court below rejected the applications filed by the petitioners vide orders dated 05.07.2017 respectively. Aggrieved by the same, present revisions are filed.

Heard Sri MSP Kamaraju, learned counsel for the petitioners, and Sri Mahadeva Kanthrigala, learned counsel for respondents.

Petitioners herein are defendants 1, 8 and 9 in O.S.No.2 of 2013 (old No.8 of 2007), which was filed for partition of petition schedule properties. As seen from the material on record, earlier, petitioners 2 and 3 herein (i.e. defendants 8 and 9) have filed I.A.No.49 of 2016 for the very same relief i.e. seeking the Court to receive additional written statement, which was rejected by the trial Court vide order dated 11.07.2016. Assailing the same, CRP No.4072 of 2016 was filed, which was dismissed by this Court on 29.08.2016 after due contest by both the parties. Thereafter, the petitioners in CRP No.4072 of

2016 along with the first defendant again filed the impugned applications seeking to receive additional written statement and also the copies of 1-A and 1-B registers.

The main ground urged by the petitioners for filing additional written statement is that the plaintiff failed to mention the total extents of items 1 to 6 of plaint schedule lands and co-owners are not made as parties to the suit. While dealing with said query, the trial Court observed that it is for the plaintiff to give all such relevant information and there is no role for the petitioners to file the impugned application. Even if the plaintiff succeeds the case also, the decree cannot be executed because of such incomplete details. Hence, this Court is also of the view that the petitioners have not come out with any justifiable ground to accept their request that too at this belated stage of the suit.

From a perusal of the material on record, it appears that the petitioners herein, who are defendants in the suit, are filing one petition or the other, thereby causing hurdles in disposal of the main suit. Further, as stated earlier, after completion of DW-1's evidence, the petitioners herein filed I.A.No.49 of 2016 seeking the very same relief and the same was dismissed by the trial Court, which was also confirmed by this Court in C.R.P.No.4072 of 2016. Now, after completion of entire evidence and when the matter is posted for arguments, the petitioners filed the impugned applications. The matter pertains to the year 2007. Considering all these circumstances, this Court is of the view that trial Court rightly dismissed the impugned applications and as such the impugned orders warrant no interference of this Court.

Hence, both the Civil Revision Petitions are dismissed.

Miscellaneous petitions pending in these revisions, if any, shall stand closed. No costs.

18.08.2017
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JUSTICE C. PRAVEEN KUMAR

