

HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No:5378 OF 2016

ORDER:

1. This revision is filed by the petitioner-plaintiff aggrieved over the order dated 13.7.2016 passed in IA(SR) No.3373 of 2013 in O.S.No.77 of 2001 by the Principal Senior Civil Judge, Kakinada, East Godavari District.

2. Originally, the petitioner filed the suit in O.S.No.77 of 2001 on the file of Principal Senior Civil Judge, Kakinada, for partition of plaint schedule items and the said suit was decreed holding that the petitioner is entitled to 11 shares out of 90 shares. Aggrieved by the said findings, the petitioner filed appeal in A.S.No.176 of 2007 before the XI Additional District Judge (Fast Track Court), Kakinada. The learned Additional District Judge allowed the appeal by setting aside the decree and judgment of the trial Court and remanding the matter to the trial Court while permitting the petitioner to carry out the amendment and while directing the trial Court to give an opportunity to both the parties to adduce their further evidence and dispose of the matter. On 20.4.2013, the trial Court disposed of the suit afresh holding that the petitioner is entitled for 11 shares out of 90 shares. On 10.6.2013, the petitioner filed the above I.A(SR) praying the trial Court to amend the Decree and Judgment by incorporating items Nos.5 to 10 of the schedule and incorporating 10/81th share in the relief portion of decree and judgment. The trial Court dismissed the said application on the ground that the relief sought by the petitioner in the above I.A. (sr) amounts to review. Hence, the petitioner filed this revision.

3. Heard and perused the material available on record.

4. It is the case of the petitioner that originally, he filed the suit for partition of items Nos.1 to 4 of plaint schedule property and to allot 11/90th share therein and after filing of the suit, his mother i.e., 9th defendant died intestate, and due to devolution of her estate, his share has been extended to 10/81th share in the plaint schedule. In the appeal, he filed I.A.No.116 of 2011 seeking amendment of plaint schedule by adding items Nos.5 to 10, and the said petition was allowed by the appellate Court and the matter was remanded to the trial Court for carrying out the amendment and for fresh disposal. He also amended the plaint in this regard. While passing the decree afresh in the above suit, the amended plaint was not taken into consideration and the suit was decreed basing on the original un-amended plaint.

5. Considering the facts and circumstances of the case, this Court is of the view that the reasons recorded by the trial Court for dismissal of the above application are not sustainable. In the present facts and circumstances of the case, the prayer sought by the petitioner does not amount to review. Therefore, this Court is of the view that this matter can be remitted to the trial Court for fresh consideration.

6. In the above circumstances, the order under revision is set aside and I.A.(sr) No.3373 of 2013 is restored. The trial Court is directed to consider the above I.A (sr) afresh and pass appropriate orders, more particularly regarding the schedule items of properties and the share of the petitioner therein in the partition suit.

7. Accordingly, the Civil Revision Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Justice Raja Elango

Date: 18th January, 2017
Nn.

HONOURABLE SRI JUSTICE RAJA ELANGO



18th January, 2017

Nn.