

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.2392 of 2017

ORDER.

This Civil Revision Petition is filed by the petitioner/ 1st defendant aggrieved by the order dated 10-3-2017 in I.A.No.343 of 2017 in O.S.No.216 of 2011 on the file of Senior Civil Judge, Proddatur wherein the trial court dismissed the petition filed by the petitioners/defendants 1 to 5 seeking permission of the court to amend the written statement and to file additional written statement in terms of order 8 Rule 9 C.P.C.

The suit is one for specific performance of the suit agreement to sale filed by the plaintiff and the defendants contested the suit.

It appears that during the course of trial, P.W.2 admitted that the suit schedule property is joint family property of Y.Konda Reddy (father of Defendants 1 to 5) and Y.Subba Reddy (father of D.6 and D.7) and having regard to said admission, the defendants wanted to take plea that the suit schedule property is the joint family property of Y.Konda Reddy, the father of defendants 1 to 5 and late Y.Subba Reddy father of defendants 6 and 7 and the suit agreement allegedly executed by the defendants 1 to 7 cannot be enforced under law because the suit schedule property is joint family property of defendants 1 to 5 and their sisters and defendants 6 and 7 and their sisters.

The trial court dismissed the said petition on the main observation that if it were the case of defendants that the suit schedule property is a joint family property between the two branches of Y.Konda Reddy and Y.Subba Reddy and the defendants

had no right to execute the agreement of sale without including the other co-sharers, said plea should have been taken in their original written statement but they did not do so and the suit is an old suit of 2011 and now the defendants want to take advantage out of admission made by P.W.2 which cannot be permitted.

Having perused the facts and impugned order, this court finds no illegality or perversity in the order impugned. If it is the joint family property of the ancestors of the defendants i.e., Y.Konda Reddy and Y.Subba Reddy and the defendants have no right to execute the agreement of sale without including the other co-sharers, such fact must be within their knowledge and nothing prevented them from taking such a plea in the original written statement. As rightly observed by the trial court taking advantage of the admission made by P.W.2 petitioners/defendants now propose to take that plea at this length of time in the suit which is of the year 2011.

In these circumstances, the trial court cannot be found fault for having dismissed the petition.

There are no merits in this revision.

Accordingly, this Civil Revision Petition is dismissed. No costs.

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

U.DURGA PRASAD RAO,J

Dated 30-6-2017

Dvs

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