

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1673 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful respondent-plaintiff is directed against the order, dated 30.10.2014, of the learned Senior Civil Judge, Nagarkurnool, passed in IA.No.338 of 2014 in OS.no.71 of 2010.

2. I have heard the submissions of Sri V. Hanmanth Rao, learned counsel for the petitioner-plaintiff. Though the respondents-defendants are served with notices, they have not entered appearance. I have perused the material record.

3. In a suit for partition, the defendants filed the afore-stated Interlocutory Application under Order VI Rule 17 of the Code of Civil Procedure, 1908, for permission to add the petition listed properties to the plaint schedule. The plaintiff resisted the said application by filing a counter. However, by the order impugned in this revision, the trial Court allowed the petition of the defendants and directed addition of the petition listed properties in the plaint schedule.

4. Learned counsel for the plaintiff mainly contended as follows: "The defendants are not entitled to seek amendment of the plaint schedule, which is a part of the pleading of the plaintiff. Though in a suit for partition all the parties are plaintiffs, if the defendants are of the view that some properties that are also liable for partition are not included in the plaint schedule, it is for them to plead so in their written statement and file a schedule along with the written statement and seek partition of the written statement schedule properties along with the plaint schedule properties, but, the defendants cannot seek amendment of the plaint." In support of the said contention, he

placed reliance on a decision of this Court in Balabolu Ramesh and others v. Savvana Radharamanamma and others¹.

5. The law is well settled that the defendants cannot ask for amendment of the plaint even with the leave of the Court. If they had any grievance about the incorrectness of the plaint schedule, they can as well plead the same in their written statement to bring the said fact to the notice of the Court and also make a request to the Court to pass a decree for partition of the omitted properties by mentioning the same in a schedule that may be annexed to the written statement. A plaint can be amended by the plaintiff alone with the leave of the Court by following the procedure envisaged under law or by the Court *suo motu*, if the facts of the case so warrant, but, the plaint cannot be directed to be amended at the request of the defendants. In the above cited decision relied upon by the learned counsel for the plaintiff, this Court referred to the decisions in A. Sudershan Reddy and others v. A. Jagga Reddy and others [2010 (4) ALT 418] and Chilakani Venkata Rao v. Ch. Lakshman Rao [2006 (4) ALT 27], which fortified the view of this Court that the plaint cannot be directed to be amended at the request of the defendants.

6. On the above analysis and for the reasons assigned, this Court holds that the order impugned is unsustainable in law.

7. In the result, the Civil Revision Petition is allowed and the order, dated 30.10.2014, of the learned Senior Civil Judge, Nagarkurnool, passed in IA.No.338 of 2014 in OS.No.71 of 2010 is set aside. As a sequel, IA.No.338 of 2014 is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending if any shall stand closed.

JUSTICE M. SEETHARAMA MURTI

30.08.2017
Vjl

¹ 2014(6) ALT 117