

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.4353 of 2017

ORDER:

The CRP is directed at the instance of the petitioner/plaintiff against the order dated 23.06.2017 in I.A.No.434 of 2017 in O.S.No.120 of 2011 on the file of I Additional District Judge, Kadapa, whereunder the Trial Court dismissed the petition filed by the petitioner under Order VI Rule 17 of CPC, to permit him to amend the plaint 'A' schedule by adding correct survey numbers and other particulars detailed in the schedule appended to the petition.

2) Heard arguments of Sri P.Kamalakar, learned counsel for petitioner and Sri K.R.Sasidharan Nair, learned counsel for respondents.

3) O.S.No.120 of 2011 is a suit for partition filed by the plaintiff against his mother, brother, sister and maternal uncle seeking partition of plaint schedule properties and different shares in different properties as narrated in the plaint in view of the facts peculiar to the suit. The defendants 1, 2 and 5 are contesting the suit and it appears the matter is under trial now.

a) Be that it may, the plaintiff filed I.A.No.434/2017 stating that in the plaint he showed A to E schedule properties on the basis of the partition list dated 06.11.2005 and unregistered will dated 04.10.2009 executed by his late father. He does not know the correct survey numbers of the landed properties shown in the plaint 'A' schedule and therefore, in Para 15 of the plaint he has clearly mentioned that the joint

family must have some other properties and as and when the availability of such properties comes to his knowledge, he reserves right to include them in the plaint. While-so, during the cross-examination, learned counsel for defendants cross-examined him at length and elicited that some of the survey numbers shown in the plaint were not correct. That apart, the defendants 1 and 2 in their written statement pleaded that he had not correctly mentioned the survey numbers in the plaint schedule of the plaint. He had shown the survey numbers and other particulars to his knowledge by the date of the suit, some of which were not correct on account of lack of knowledge. Now he came to know the correct survey numbers and other particulars regarding Item Nos.4, 5, 6, 7, 9, 10, 11, 13, 18, 19, 21 and 24 of the plaint 'A' schedule. These circumstances necessitated him to file the petition to amend the plaint schedule. The respondents filed a lengthy counter and vehemently opposed the petition. The substance of their counter was that in their written statement they have clearly taken the plea that the plaint schedule is not correct and still the petitioner kept quiet and filed the instant petition at a belated stage; earlier the petitioner filed I.A.No.1496/2011 with the same relief and the said petition was dismissed on 01.03.2012 and hence the present petition is not maintainable.

b) The Trial Court dismissed the petition on the main observation that there was no diligence on the part of the petitioner/plaintiff as he filed the petition at a belated stage. Ofcourse, the Trial Court, it appears, consoled the petitioner in its further observation that after introduction of the evidence from the side of defendants, if such extents

and survey numbers as mentioned in the proposed amendment petition is required, it can be done and it can be brought before the Court for correction even at the time of judgment.

Hence the CRP.

4) The main plank of argument of learned counsel for petitioner is that in Para 15 of the plaint itself petitioner has clearly mentioned that he provided the schedule as per his knowledge and as and when availability of some other properties comes to his knowledge, he would add them and to that effect he reserved his right. The defendants no doubt in their written statement took a plea that the plaint schedule in respect of some of the items is not correct. He further argued that previously the petitioner filed I.A.No.1496/2011 to bring on record some of the properties left to his father and the same was dismissed not on merits but on the ground that the said petition was not maintainable under Order II Rule 2 CPC. Hence the said order will not operate as *res judicata*. His further submission is that in a suit for partition, it is the duty of the plaintiff to show all the joint family properties correctly and seek for partition, as otherwise the Court will not be in a position to adjudicate upon the matter correctly and it would lead to further complications. In that view of the matter, the Trial Court ought not to have dismissed the petition on the ground that it was a belated one. Learned counsel would submit that on the ground of delay, the rights of the parties should not be stifled as there is no limitation for filing the partition suit.

5) Per contra, learned counsel for respondents supported the impugned order and argued that inspite of the clear objection taken in written statement regarding the correctness of the schedule, the petitioner slumbered over the matter and filed the petition only after his cross-examination and further, his earlier petition for the same relief was dismissed. Hence, there are no merits in the instant petition.

6) The point for determination is:

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

7) **POINT:** Admittedly, the suit is one for partition. It is the duty of the petitioner to submit the particulars of all the joint family properties in a correct manner and establish that they are the joint family properties to lay a claim therein. It is trite law that partial partition is bad at law. Further, incorrect particulars regarding properties will create any amount of difficulty for the Trial Court to partition the properties and it will lead to multiplicity of proceedings. It is true that the defendants have taken a plea in their statement regarding correctness of the schedule and the petitioner has not taken steps immediately. However, it appears he filed I.A.No.1496/2011 seeking permission of the Court to permit him to bring the petition schedule properties on to the record as those properties were also some of the properties left behind by his father late Rama Chandra Reddy. It appears, the said petition was dismissed on the ground that the petition was not maintainable under Order II Rule 2 CPC. Therefore, the said petition cannot be said to have been decided on merits but it was dismissed on technical ground.

Therefore, on that ground the present petition cannot be discarded in my considered view.

8) Then belatedness is concerned, in Para 15 of the plaint, the petitioner/plaintiff clearly mentioned thus:

“The plaintiff believes that the joint family must have some other properties which D.1 and D.2 might have known and taken care not to bring such properties to the notice of the plaintiff. As and when the availability of such properties comes to the knowledge of the plaintiff, he reserves his right to include them in the plaint schedule. Plaintiff has now restricted his claims to the suit properties for the purpose of this suit only and has no intention to abandon his claims over other properties which are now not within the knowledge of the plaintiff. The plaintiff craves the leave of the Hon’ble Court to permit him to include such other properties when it becomes known to the plaintiff.”

Therefore, the petitioner in my considered view, made a clean breast of his case that he believed that some more joint family properties were there and as and when availability of those properties comes to his knowledge, he would bring them on record and for this purpose he reserved his right to include them. It may be true that the defendants have taken the plea in their written statement that the plaint schedule was not correct. However, it would take some time for the parties to ascertain about the correct particulars of the properties and to file the petition. His earlier attempt was aborted due to technical laches. In these circumstances it is inappropriate to throw the blame on the petitioner. Order VI Rule 17 CPC would show that the Court may at any stage of the proceedings allow the parties to amend their pleadings which may be

necessary for the purpose of determining the real questions in controversy. However, it is mentioned that no application for amendment shall be allowed after the trial has commenced unless the Court comes to conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial. So in order to permit a party to amend the pleadings, two prerequisites are imposed. i) Proposed amendment is necessary for determining the real question in controversy between the parties ii) If the amendment is sought to be made after the commencement of the trial, the same cannot be allowed as a matter of course unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before the commencement of the trial. So far as the first requirement is concerned, it is needless to emphasize that correct particulars of the properties are very much essential for determining the real question in controversy in any suit, particularly, in a suit for partition. If instead of allowing the petition, the same is dismissed, it would unnecessarily lead to multiplicity of proceedings as held by the Apex Court in the case of *Sajjan Kumar vs. Ram Kishan*¹. So far as the second requirement is concerned, as stated supra, earlier the petitioner filed a similar petition which was ofcourse dismissed on technical ground. Therefore, the petitioner cannot be imputed of total lack of diligence. At the outset, in my view, the amendment petition can be allowed on imposing suitable terms.

¹ (2005) 13 SCC 89

9) In the result, this Civil Revision Petition is allowed by setting aside the impugned order. Consequently, I.A.No.434 of 2017 in O.S.No.120 of 2011 on the file of I Additional District Judge, Kadapa, is allowed permitting the petitioner/plaintiff to amend the plaint as sought for in I.A.No.434/2017 on payment of costs of Rs.3,000/-(Rupees three thousand only) to District Legal Services Authority, Kadapa. No costs.

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

Date: 12.12.2017

scs

U. DURGA PRASAD RAO, J

