THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL REVISION PETITION No.4045 of 2017

ORDER:

The present Civil Revision Petition is directed against the order dated 29.04.2017 in I.A.No.267 of 2015 in O.S.No.4 of 2014 passed by the learned Senior Civil Judge, Kamareddy, whereby and whereunder, the application filed by the plaintiff for amendment of plaint was allowed.

The petitioners herein are the defendants, whereas the respondent herein is the plaintiff.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the original suit.

By the aforesaid I.A filed under Order VI Rule 7 read with Section 151 of the Code of Civil Procedure, substantially, the plaintiff intended to introduce not only the relief of declaration that the sale deed No.390/1972 dated 15.07.1972 of Joint Sub-Registrar, Nizamabad, is forged one and, therefore, it is to be cancelled, but also asked the relief of declaration that defendant No.1 has no right to execute gift settlement deed No.2347/1999 dated 30.09.1999 in favour of defendant No.3 and, therefore, it is to be cancelled. The plaintiff further intended to introduce the relief of declaration that defendant No.2 has no right to execute gift settlement deed No.2348/1999 dated 30.09.1999 in favour of defendant No.4 and, therefore, it is to be cancelled. The plaintiff also sought to include 'F' schedule property describing it as country tiled roofed house

bearing No.2-79/1 in an extent of 18 sq. yards situated at Jangampally village, Bhiknoor, Nizamabad District, after schedule 'E', and also to include 'G' schedule property describing it as another country tiled roofed house bearing No.2-93 in an extent of 173.93 sq. yards situated at Jangampally Village, Bhiknoor, Nizamabad District, showing the specified boundaries within which the said house is located.

The amendments sought to be introduced are strongly resisted to by the defendants on the main grounds that when the plaint was originally presented, these reliefs were not at all pleaded by the plaintiff, despite the fact that he sought partition of properties and even pleaded joint possession of two of the items mentioned in plaint paragraph '1' and despite alienating the properties fallen to his share in the partition that took place on 15.02.1971 among himself, defendant Nos.1 and 2 and their mother. It was also stated that earlier when defendant Nos.3 and 4 were impleaded in the suit, these reliefs were not at all pleaded and the plaintiff has now come up with the present amendments and the proposed amendments are barred by limitation.

The Court below, after considering the matter in detail, allowed the I.A by the order under challenge. Questioning the same, the defendants preferred the present revision petition.

Heard Sri D. Bhaskar Reddy, learned counsel for the revision petitioners - defendants, and Sri T. Laxmikanth Sarma, learned counsel for the respondent - plaintiff.

Learned counsel for the revision petitioners would submit that a right has been accrued to the revision petitioners and the leaned Senior Civil Judge was not right in allowing the I.A. He would also submit that the order under challenge would reflect that the learned Senior Civil Judge has not properly appreciated the factual aspects as projected by the defendants in their counter.

Learned counsel for the respondent, of course, supports the order under challenge.

The relief originally sought and retained by the plaintiff was for partition and, after filing the written statement, the present I.A is filed by the plaintiff agitating the plea of earlier partition that took place on 15.02.1971 and alienation of the property, which fell to his share in the said partition, in favour of defendant Nos.1 and 2 and subsequent gift deeds executed in favour of defendant Nos.3 and 4, who are the wives of defendant Nos.1 and 2, respectively, by defendant Nos.1 and 2, and that the plaintiff, despite impleading defendant Nos.3 and 4, did not initially plead the present reliefs. So, certainly, certain issues are involved in the present suit in view of the order under challenge passed by the learned Senior Civil Judge, among which, one is, whether any right is accrued to defendants Nos.1 and 2 when the sale was effected by the plaintiff in their favour initially under registered documents and subsequently when the gift settlement deeds were executed in favour of defendant Nos.3 and 4 by defendant Nos.1 and 2. Therefore, relevant issues are to be settled for trail in that regard.

It is needless to observe that the entire burden rests on the plaintiff to affirmatively prove that he was in joint possession of the items, which he has mentioned in paragraph '1' of the plaint. Equally, the burden also rests on him to prove the plea of fabrication set up by way of introducing the present amendments to entitle him for the reliefs he has sought for. The limitation aspect is not a pure question of law as could be seen. It is a mixed question of law and fact as the registered instruments are involved. Therefore, the relevant issues are to be settled for trial basing on the allegations in the present petition and the counter and after the neat copy of the plaint is filed and additional written statement is filed meeting the present amendments sought for.

Now, the question is whether the proposed amendments change the nature and character of the suit as such ?

Since the main relief itself is for partition and the initial burden rests on the plaintiff to prove that he is entitled for partition of the properties shown in the schedule, the other reliefs, which are now sought to be introduced through the application in I.A.No.267 of 2015, becoming ancillary, certainly, the request of the plaintiff cannot be rejected at this stage, as all issues are to be gone into when the trial takes place in the suit. Therefore, leaving it open to the defendants – revision petitioners to file additional written statement, it is observed that they are not entitled for the relief of setting aside the order under challenge.

Hence, the present Civil Revision Petition is dismissed. It is, however, directed that the Court below shall give an opportunity to the

defendants - revision petitioners to file their additional written statement, on which the Court below must necessarily settle additional issues, in case issues are already settled for trial and if not settled yet, to settle the issues touching the pleas now put forth through the present amendment.

Miscellaneous applications, if any pending in the present revision, shall stand closed. No order as to costs.

JUSTICE A.SHANKAR NARAYANA

21.09.2017
v v