

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.2187 OF 2017

ORDER:

The ground on which the present Civil Revision Petition is filed challenging the order dated 09.02.2017 in I.A. No.737 of 2015 in O.S. No.21 of 2011 on the file of the learned Principal Senior Civil Judge, Mancherial, is that the learned Senior Civil Judge was wrong in accepting the share claimed by respondent No.1 - plaintiff, as 1/9th share, originally claimed was a typographical mistake as it was 1/4th share to which he is entitled, according to his claim, which was introduced by way of amendment under Order - VI Rule - 17 read with Section 151 of the Code of Civil Procedure, 1908.

2. Heard Sri Mahadev Anyamrambhatla, learned counsel for the revision petitioners - respondent Nos.3 to 9 (defendant Nos.3 to 9), and Sri V. Ravi Kiran Rao, learned counsel for respondent No.1 - petitioner (plaintiff), and perused the material on record.

3. The application in I.A. No.737 of 2015 was filed at the stage when the issues were not settled for trial and the same was allowed by the trial Court holding that there is a typographical error in claiming the share by respondent No.1, the plaintiff. According to the amendment, the plaintiff is claiming 1/4th share as against 1/9th share earlier mentioned. There is also death of one of the sharers that occurred during pendency of the suit.

4. Now, the learned counsel for the revision petitioners, defendant Nos.3 to 9, would submit that a couple of days earlier, issues were settled for trial and even in settling the issue, the issue was so settled that, whether the plaintiff is entitled to 1/4th share in the plaint schedule properties?

5. In such an event, the present petition becomes infructuous, and, in fact, the revision petitioners can challenge the framing of very same issue. Thus, leaving it open, whether there has been typographical error or otherwise and the finding recorded by the Court below in accepting it for challenging, in case the revision petitioners challenge the very framing of issue settled for trial to agitate all the aspects therein. Incidentally, it is also observed that in a suit for partition though, the plaintiff claims a larger share than to which he is entitled, it is for the trial Court while disposing of the suit after adjudicating upon to arrive at to what share the plaintiff is actually entitled. Thus, the trial Court is not prevented from examining the issue in the light of entitlement of share of the parties in accordance with law.

6. The Civil Revision Petition is accordingly disposed of leaving it open to the revision petitioners to agitate the issue in case they so choose, that too, if they challenge the very framing of the issue. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the revision stand disposed of.

August 18, 2017.
PV

A. SHANKAR NARAYANA, J

