

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.5726 of 2017

ORDER:

Defendant No.2, in O.S.No.138 of 2011 on the file of the Additional Senior Civil Judge, Kurnool, is the petitioner in the present revision, filed under Article 227 of the Constitution of India.

Heard Sri Virupaksha Dattatreya Gouda, learned counsel for the petitioner-defendant No.2, Sri Palle Sriharinath, learned counsel for the respondent No.1, and Sri K.Ramesh Kumar, learned counsel for the respondent No.2, apart from perusing the material available before the Court.

The second respondent herein, who is the daughter of the first respondent and the sister of the petitioner herein, instituted the above mentioned suit, seeking partition of the plaint schedule properties. The defendants herein filed their written statements and are contesting the suit. When the said suit was posted for defendant's side evidence, the present I.A.No.560 of 2017 came to be filed by the first defendant-first respondent herein, under the provisions of Order VI Rule 17 CPC, seeking amendment of the written statement by way of deletion of paragraphs 4 and 5 of the written statement and by way of substitution of the same with paragraphs 4 and 5 as indicated in the application. The

learned Senior Civil Judge, by way of an order, dated 21.09.2017, allowed the said application obviously on the sole ground that the second defendant-petitioner herein did not file her counter. The said order passed by the learned Judge reads as under:

“Counter of R2 not filed till 4.45 p.m. Sufficient time is given. Counter of R2 is treated as nil. Perused the records. Considering the circumstances stated, the petition is allowed”.

It is contended by the learned counsel for the second defendant-petitioner herein that the order impugned is highly erroneous and contrary to law; that it is not in consonance with the provisions of Order VI Rule 17 CPC; that the impugned order is completely bereft of reasons. It is also the submission of the learned counsel that, as per the proviso to Order VI Rule 17 CPC, after commencement of trial, no application for amendment is permissible in the absence of due diligence on the part of the person applying for.

On the other hand, it is submitted by the learned counsel for the respondents that there is absolutely no illegality nor there exists any infirmity in the impugned order, as such, no correction by this Court, under Article 227 of the Constitution of India, is warranted. It is the further submission of the learned counsel that, since the defendant No.2-petitioner herein did not choose to file counter, opposing the application, she cannot be permitted to maintain the present revision.

In the above background, now the question that arises for consideration of this Court is:

“Whether the impugned order passed by the learned Additional Senior Civil Judge is sustainable and tenable or whether the same warrants any interference of this Court under Article 227 of the Constitution of India?”

A perusal of the order impugned in the present revision reveals that, except recording the failure on the part of the petitioner herein to file counter, obviously the learned Judge did not assign any reason for allowing the application. Admittedly, the present suit stood posted for leading evidence on behalf of the defendants. As rightly pointed out by the learned counsel for the petitioner, unless the person applying for clearly establishes due diligence, no amendment of pleadings is permissible in view of the proviso to Order VI Rule 17 CPC. Admittedly, the said aspect missed the attention of the learned judge. It is also required to be noted that, for allowing the application, the learned Judge also did not assign any reasons in the impugned order. On that ground also, the impugned order is liable to be set aside.

Learned counsel for the second respondent placed before this Court the judgments of the Honourable Apex Court in **RAM NIRANJAN KAJARIA v. SHEO PRAKASH KAJARIA AND OTHERS¹** and **BALDEV SINGH AND OTHERS v. MANOHAR SINGH AND ANOTHER²**

¹ (2015) 10 SCC 203

² (2006) SCC 498

In the instant case, since the Court below passed the impugned order without assigning any reasons and had no occasion to examine the scope and ambit of Order VI Rule 17 CPC, the above judgments of the Honourable Apex Court would not render any assistance to the respondents herein.

For the aforesaid reasons, the Civil Revision Petition is allowed, setting aside the impugned order, dated 21.09.2017, passed by the learned Additional Senior Civil Judge, Kurnool in I.A.No.560 of 2017 in O.S.No.138 of 2011 and the said I.A. stands restored to file and the matter is remanded for fresh consideration by the learned Judge by passing appropriate orders after giving one opportunity to the petitioner herein for filing counter.

As a sequel thereto, miscellaneous petitions pending, if any, shall also stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

15th December, 2017
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