

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.6028 of 2017

ORDER :

This Revision is filed challenging the order dt.03.08.2017 in I.A.No.134 of 2017 in O.S.No.10 of 2014 on the file of XI Additional District and Sessions Judge, Piler.

2. The petitioner herein is plaintiff in the above suit.
3. He filed the suit for partition of certain properties against his brother who is the respondent herein / and defendant in the above suit.
4. Admittedly, the petitioner had denied in the plaint that Item No.47 of the plaint 'A' Schedule is joint family property, and that it is liable for partition.
5. Written statement was filed by respondent way back on 08.12.2010 stating that the said property does not belong to either the petitioner or the respondent, and that it belongs to a third party.
6. Thereafter, issues were framed; trial commenced, the evidence of the side of petitioner was closed, and evidence of the respondent commenced.
7. At that stage, petitioner filed I.A.No.134 of 2017 to re-open his evidence on the ground that he forgot to prove the fact that item No.47 of plaint 'A' schedule is joint family property; and that he would like to summon and examine Secretary of the Gram Panchayat of the

Yerravaripalem to mark a registered sale deed dt.28.07.2009 to give evidence for the said purpose.

8. This application was opposed by respondent on the ground that though petitioner was given opportunity, he did not avail himself of it and after closure of his evidence and after the respondent had filed his evidence, the petitioner is now trying to improve his case and set up a new case which is not pleaded by him. It is also contended that petitioner did not assign any reasons for his failure to produce the proposed evidence earlier.

9. By order dt.03.08.2017, the Court below dismissed the said application. It held that the evidence of petitioner was closed long back and the case was posted for the respondent's evidence on 17.04.2017; thereafter, the matter underwent several adjournments and then the petitioner has filed the present application to fill up the lacunae in his evidence. It held that when the matter is posted for cross-examination of DW.1, at that stage, the petitioner cannot re-open the suit.

10. Assailing the same, the present Civil Revision Petition is filed.

11. The counsel for petitioner sought to contend that the suit is a partition suit, and grave prejudice would be caused to the petitioner if the order of the lower Court is sustained.

12. Admittedly, the written statement was filed by the respondent in December, 2010 taking a plea that item No.47 of Plaint 'A' property

is not joint family property. Petitioner had seven years to collect evidence to disprove such plea since his evidence came to be closed only in 2017 and the defendant's evidence commenced in April, 2017. The petitioner did not exercise due diligence to adduce proper evidence in support of his plea that item No.47 of plaint 'A' schedule was joint family property when he had opportunity to lead evidence though he had seven years to prepare for it. Once the evidence of DW.1 commenced, at a belated stage he cannot be allowed to maintain this application.

13. Therefore, I see no error of jurisdiction in the order passed by the Court below warranting interference under Article 227 of the Constitution of India with the order of the lower Court.

14. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

15. However, the Court below shall expedite the disposal of the above suit.

16. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-11-2017

Ndr/*