

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.192 of 2018

ORDER :

Heard the counsel for petitioner.

2. This Civil Revision Petition is filed challenging the order dt.19-12-2017 in I.A.No.832 of 2017 in O.S.No.152 of 2011 of the IV Additional District Judge, Tirupathi.

3. Petitioner is plaintiff in the suit. She filed the said suit for partition of certain properties and for allotment of 1/4th share therein. Written Statement was filed by the respondents opposing the suit claim. After the trial was concluded and the matter was posted for arguments, the petitioner filed I.A.No.832 of 2017 to amend the plaint by deleting certain properties from the plaint schedule and also adding certain properties to the plaint schedule among others.

4. In the affidavit filed in support of this application, the petitioner stated that she was residing in Hyderabad since 1985 and at the time the suit was filed, she had failed to secure the particulars of all the properties of joint and ancestral properties. She also stated that during cross examination of defendant Nos.1 and 2, she came to know about certain other properties in which she had a share along with defendant Nos.1 to 3 and therefore, she was advised to add those properties and to delete certain other properties. She also contended that the proposed amendment did not change the nature of the suit nor it

would introduce new cause of action, otherwise adversely affected the rights of the parties if the amendment was not allowed.

5. Counter affidavit was filed by 1st respondent opposing the plea for amendment. It is specifically stated that after the case was posted for arguments, the application for amendment is made and such applications are prohibited under the proviso to Order VI Rule 17 CPC. It was also pointed out that during the pendency of the suit, the petitioner had preferred the appeal before the R.D.O. and therefore, she had knowledge about the properties, and she cannot file this application after the proceeding before the R.D.O. was concluded and it is filed only to delay disposal of the suit. It is also contended that the proposed amendment is hopelessly barred by limitation since the petitioner has admitted that she was not in possession of the properties since 1985.

6. By order dt.19-12-2017, the Court below dismissed the said application. The Court below referred to the contention of the petitioner that after filing of the suit, at the time of evidence of the petitioner, she came to know that serial Nos.12 to 27 of 1st item of the plaint schedule are joint family properties, and held that she filed the application for amendment after the matter was posted for arguments. It also stated that as regards the adding of properties, no proof had been filed except self-serving affidavit of the petitioner that they are the joint family properties except that they were mentioned in the cross examination of respondent Nos.1 and 2; that the petitioner had

not shown any due diligence and ascertained whether the properties belong to the joint family property or not; and there is no valid reason why she failed to file such application earlier before the trial commenced.

7. Assailing the same, this Civil Revision Petition is filed.

8. Learned counsel for the petitioner sought to contend that she would be put to grave prejudice since she would be deprived of her share in the properties whose addition was sought. He also reiterated the stand taken in the affidavit filed in support of I.A.No.832 of 2017 filed by the petitioner.

9. Order VI Rule 17 CPC has been amended in 2002 by the CPC (Amending Act 22/2002) introducing the proviso. It states that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

10. In the instant case, no circumstances are pointed out by the petitioner why the petitioner could not have sought amendment of the plaint before the trial commenced. In fact, the very admission of the petitioner in the 2nd paragraph of the affidavit that before filing of the suit, she did not secure particulars of the joint family properties, shows her negligence.

11. In these circumstances, I am of the view that the Court below was correct in refusing to allow the application for amendment at the belated stage when the evidence was closed and the matter was posted for hearing of the arguments.

12. Accordingly, the Civil Revision Petition is dismissed. No costs.

13. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-01-2018

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