

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 457 of 2018

ORDER:

Heard.

The present Civil Revision Petition came to be filed under Article 227 of the Constitution of India, assailing the order dated 03.01.2018, passed in I.A.No.850 of 2017 in O.S.No.96 of 2011 on the file of Senior Civil Judge, Peddapuram, wherein, the application filed by the petitioner/plaintiff, under Order VI Rule 17 and Section 151 C.P.C., seeking amendment of suit schedule by including items 7 to 9 in the suit schedule was allowed.

The main ground urged by the learned counsel for the revision petitioners is that the averments in the plaint are contrary to the stand taken by him. According to him, in para 7 of the plaint, the plaintiff has categorically stated that the first defendant has no right to execute any deed in respect of joint family property, in which plaintiff has undivided 1/4th share. It is further stated that except the schedule property all other properties of the family are partitioned among the members under the family arrangement and the members list dated 05.05.1984 is reduced to writing by the joint family members. Therefore the deeds executed by first defendant in favour of others are not binding on the plaintiff and as such they have to be ignored. It is further stated that contrary to the averments made in the plaint, it has been stated in the I.A. filed in support of the present application that while drafting the plaint schedule, the petition schedule was mistakenly, inadvertently and by oversight not included in the plaint schedule. A counter came to be filed opposing the

same. In paragraph No.4 of the counter, it has been stated that the alleged schedule properties are not partitionable properties and the petition schedule properties are the absolute properties of defendants No.2 and 5 and defendant Nos.2 and 5 are in exclusive possession and enjoyment of it, with absolute rights which fact is known to the petitioner/plaintiff.

In view of the above, it is urged that the finding of the trial Court in the impugned order that respondent Nos.2 to 6 therein did not raise any appropriate objection for the amendment sought by the plaintiff seeking inclusion of Item Nos.7 to 9 in suit schedule is totally incorrect and false.

Since objection has been raised with regard to the inclusion of item Nos.7 to 9 in the suit schedule, prima facie it appears that the order of the trial Court, in holding that respondent Nos.2 to 6 therein did not raise appropriate objections, appears to be incorrect.

Hence the order under challenge is set aside and the matter is remanded back to the trial Court to consider the same in accordance with law, after hearing all the concerned.

Accordingly, the Civil Revision Petition is allowed and remanded. No costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

20.04.2018
vnb