

HON'BLE SRI JUSTICE N.BALAYOGI

CIVIL REVISION PETITION No.5060 of 2012

ORDER:

Petitioners – defendants aggrieved by the order dated 06.09.2012 passed in I.A.Nos.516 and 517 of 2012 in O.S.No.3 of 2007 on the file of Principal Junior Civil Judge, Puttur, the present Civil Revision Petition is filed.

2. In this Civil Revision Petition, notice before admission was ordered. Respondents having received notices appeared through counsel. Both the counsel are present and requested for disposal of the main revision. Hence, the main Civil Revision Petition itself is taken up for disposal.

3. The contention of the learned counsel for the petitioners is that amendment application has been filed by the respondents – plaintiffs when the suit is posted for arguments and it is belated which is a clear abuse of process of Court; the petitioners neither pleaded due diligence nor stated any reason or cause for non-inclusion of petition schedule properties (which now wanted to be included by way of amendment) in the original suit; and the proposed properties sought to be included are not joint family properties which were sold away long back.

4. Per contra, learned counsel for respondents – plaintiffs contended that the suit was filed in respect of some agricultural lands of joint family properties without including schedule property purchased in the name of defendant No.3

with joint family funds and other landed properties as she was widow at the time of filing of suit.

5. Now, the point that arises for determination is “whether the order of the Trial Court suffers from any legal infirmities warranting interference.”

6. Respondents – plaintiffs filed the suit in O.S.No.3 of 2007 for partition of schedule properties into five equal shares and allot one such share and put them in separate possession; and further direct petitioner Nos.2 and 3 - defendant Nos.2 and 3 to account for the income derived from the suit properties from the date of suit till the plaintiffs are put in possession.

7. It is also a fact that respondent No.1 is the wife and respondent Nos.2 and 3 are the minor son and daughter of late V.Suresh Babu, who are the plaintiffs in the main suit.

8. In the affidavit filed O.S.No.3 of 2007, respondents – plaintiffs pleaded that late Nagula Naidu, father-in-law of respondent No.1, was the Manager of joint family; some of the suit properties are ancestral and some are purchased by Nagula Naidu in the name of joint family members i.e. petitioners – defendants; and that respondents – plaintiffs are joint owners as members of the joint family. It is further stated that suit was filed in respect of only some agricultural lands of the joint family properties without including the house property and some of the landed properties at Sitharamapuram Village; the third item of the suit property is house site purchased in the name of third defendant with joint family funds in which

they claim a share; by oversight, the plaintiffs – respondents have not included the said properties in the plaint schedule; and, to avoid multiplicity of proceedings, the properties mentioned in I.A.No.517 of 2012 be added to the petition schedule by way of amendment.

9. The Trial Court, by its common order dated 06.09.2012, in I.A.Nos.516 and 517 of 2012 in O.S.No.3 of 2007, allowed the applications seeking to reopen the suit and amend the plaint schedule observing that, even after the lapse of limitation period and before passing final decree, amendment petition can be allowed in order to avoid multiplicity of proceedings and to decide the matter.

10. In **Narne Estates Ltd. V. N.Gopala Naidu**¹, it was held that the plaintiffs failed to plead and prove due diligence as envisaged under proviso to Order VI Rule 17 CPC, and the amendment petition, after a lapse of five years, is not maintainable.

11. Respondents relied on **Sheo Pujan Rai v. Ram Ekbal Rai**², wherein Patna High Court, relying on the judgment of this Court, in **Somireddi Burrayya v. Somireddi Atchayamma**³, held that, after passing of preliminary decree, while the suit was pending for preparation of the final decree in which the plaintiff wanted to substitute certain properties, which were opposed by the defendant, the objection was fit to be overruled and it was also held that the Court had power to

¹ 2011(5) ALT 562

² AIR 2008 Patna 50

³ AIR 1959 AP 26

allow the amendment in exercise of jurisdiction under Order VI Rule 17 and Section 153 CPC. It further observed that the plaintiff – opposite parties were seeking addition of the properties, which were, admittedly, joint ancestral properties and were covered under the same set of facts, which have already been decided by the learned Trial Court at the time of passing of preliminary decree and all the relevant aspects of the matter have been considered by the learned Court below while passing the impugned order and it has rightly found that it would neither change the nature of the suit nor it would take other side by surprise and, on the other hand, such addition deems necessary to settle the controversy as a whole and prevent any multiplicity of the suits and proceedings.

12. In the case on hand, there is a specific plea in the petition affidavit as well as in the plaint that the respondents – plaintiffs filed suit in O.S.No.3 of 2007 only in respect of some agricultural lands without including house property and some landed properties at Seetharamapuram Village and item No.3 of the suit schedule property is house site purchased in the name of defendant No.3 from the joint family funds in which they claim an undivided share.

13. In the counter affidavit filed by the petitioners – defendants in I.A.No.571 of 2005, it is specifically pleaded that the proposed adding item No.11 belongs to Sri Munikrishnama Naidu; defendant No.1 and her husband, Sri Nagula Naidu, along with another Sri Ellapa Naidu and his wife Nagamma

jointly sold the same under registered sale deed dated 27.09.1979; in respect of item No.12, it is also stated that defendant No.1 and her husband gifted the same to the Z.P. High School; item No.3 of the plaint schedule belongs to Hari Prasad - defendant No.3, which was purchased under registered sale deed dated 31.07.2003; and item No.11 is the land in Sy.No.240/3 was sold by defendant No.1 to Chenchurama Naidu.

14. From the pleadings in the counter, it is not in dispute that item No.11 was sold by defendant No.1 – petitioner No.1 and her husband; item No.12 was gifted by petitioner No.1 – defendant No.1 and her husband to Z.P. High School; and item No.10 was sold by petitioner No.1 – defendant No.1. Admittedly, the properties are in the name of defendants.

15. The record clearly shows that respondent No.1 – plaintiff No.1 is widow and is a lady and did not have knowledge of these items when the suit was filed. It came to light only when the suit was posted for arguments and now she want to add those items in the plaint schedule. Respondent No.1 specifically pleaded in the petition that, by oversight, these items were not included at the time of filing of the suit and these items are joint family properties in which they got 1/5th share.

16. The contention, of the petitioners – defendants that these are self-acquired properties in which the respondents – plaintiffs have no right, is a fact to be adjudicated in the main

suit by adducing oral and documentary evidence by framing necessary issues and give an opportunity to the parties to agitate the same. It is also a fact that those properties were acquired with joint family funds. Whether respondents got any right or share is required to be adjudicated by framing necessary issues and adducing evidence. By adding those items to the petition schedule, certainly the value of the suit may be increased. It is the concerned Court to consider the jurisdictional point. By adding those items, it would not change the nature of the suit and to avoid multiplicity of proceedings, I am of the considered view that adding of the said items by way of amendment is necessary to set aside the controversy and prevent multiplicity of proceedings. I do not find any error or illegality in the order of the Trial Court warranting interference.

17. In the result, the Civil Revision Petition is dismissed with costs while confirming the order dated 06.09.2012 passed in I.A.Nos.516 and 517 of 2012 in O.S.No.3 of 2007 by the Principal Junior Civil Judge, Puttur.

18. Miscellaneous petitions, if any, pending, shall stand closed.

N.BALAYOGI,J

Dt:05.12.2018
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