

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.723 OF 2018

ORDER :

This Civil Revision Petition is filed against order dated 04.12.2017 passed in I.A.No.1369 of 2017 in O.S.No.02 of 2016, wherein and whereby the application of the petitioners/defendants filed under Order VII Rule 11 of CPC to reject the plaint filed by the 1st respondent/plaintiff is dismissed.

2. Brief facts which are necessary for disposal of this Revision Petition are as follows:

The 1st respondent/plaintiff filed the suit against the petitioners/defendants for partition of schedule properties into two equal shares for the allotment of one such share to her. It is stated that the 4th defendant is the foster son of petitioner/1st defendant. The 2nd defendant is the son of 4th defendant, who is a minor being represented by his father. The 3rd defendant purchased item No.8 of schedule property from the 1st defendant under a registered sale deed dated 31.07.2014. The 1st respondent/plaintiff is not the natural daughter of the petitioner and his wife Appalana Narasamma. In fact, the 1st petitioner/1st defendant and his wife had no issues during their wedlock, as such, they looked after the 1st respondent and treated her as their foster daughter. The 1st respondent/plaintiff is the daughter of one Lanka Seetharamulu and Sarojini. The 1st respondent/plaintiff filed the suit without disclosing the said fact with false allegations. The 1st petitioner filed I.A.No.168 of 2016

for DNA test as the paternity of 1st respondent is in dispute and the same was allowed by Court below vide order dated 17.01.2017. Aggrieved by the aforesaid orders, the 1st respondent/plaintiff filed Civil Revision Petition before this Court. After filing of the said CRP, 1st respondent/plaintiff filed I.A.No.888 of 2017 praying the Court to grant permission to amend the plaint alleging that she is not the natural daughter of the 1st petitioner/1st defendant and his wife and that she is the natural daughter of Lanka Seetharamulu and Sarojini setting up a theory of adoption. It is stated that the 1st respondent/plaintiff was given in adoption to the 1st petitioner and his wife. The 1st respondent cannot alter the basic structure of the suit and that there is no cause of action and that the 1st respondent cannot be permitted to raise inconsistent pleas and sought for rejection of the plaint filed by the 1st respondent/plaintiff.

3. The 1st respondent/plaintiff filed counter denying the averments in the affidavit filed in support of the Interlocutory Application stating that her natural parents are close friends to the wife of 1st defendant and as they are not in a position to look after the plaintiff, the 1st petitioner/1st defendant brought the plaintiff to his house, educated her and performed her marriage as his foster daughter, but not as his natural daughter. In her school records, the 1st defendant signed as her natural father. It is stated that after filing of CRP against orders in I.A.No.168 of 2016, she was advised by her counsel to make an enquiry with regard to contention of 1st petitioner/1st defendant about her paternity. Accordingly, she approached Lanka Seetharamulu and

Sarojini and thereafter, she came to know that the 1st defendant is not her natural father and that she was born to Lanka Seetharamulu and Sarojini and also that she was given in adoption to the 1st petitioner/1st defendant and his wife. Thereafter, she filed petition to amend the suit averments and that there is no cause of action to file the plaint is not correct, as such, sought for dismissal of the petition.

4. The Trial Court, after considering the above facts dismissed the application filed by the 1st petitioner/1st defendant for rejection of the plaint. Aggrieved by the same, this Revision Petition is filed.

5. Heard Sri T. Ravi Kumar, learned counsel for the petitioners/defendants and Sri V.Ravinder Rao, learned Senior Counsel appearing on behalf of the 1st respondent/plaintiff.

6. Learned counsel for the petitioners/defendants submit that there is no cause of action for filing of the suit by the 1st respondent/plaintiff and the application filed by the 1st petitioner/1st defendant for rejection of the plaint is erroneously dismissed by trial Court. He submits that the 1st respondent/plaintiff filed I.A.No.888 of 2017 for introducing the plea of adoption, which is inconsistent to the original pleadings of the plaint and that too after allowing the application filed by the 1st petitioner/1st defendant in I.A.No.168 of 2016 for DNA test. He submits that since the 1st respondent/plaintiff is taking inconsistent pleas, the plaint filed by her has to be rejected.

7. On the other hand, Sri V.Ravinder Rao, learned Senior Counsel submits that the application filed by the 1st

respondent/plaintiff in I.A.No.888 of 2017 for amending the plaint by incorporating the word 'adoption' before the word 'daughter' and 'father' has already been allowed by the Court below and that the question as to whether the 1st respondent/plaintiff is adoptive daughter/foster daughter of the 1st petitioner/defendant has to be decided at the stage of trial, but not at this juncture. He submits that since the petition filed by the 1st respondent/plaintiff for amendment of the plaint is allowed, question of rejecting the plaint on the ground of lack of cause of action does not arise.

8. Before considering the rival contentions of both parties, it is necessary to examine under what circumstances plaint can be rejected. For that purpose, it is necessary to extract Order VII Rule 11 of CPC, which reads as follows:

"11.Rejection of plaint: The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

For any plaint to be rejected, the person seeking for rejection of plaint has to satisfy that his case falls in any one of the grounds mentioned under Order VII Rule 11 of CPC and in

this case it is the case of petitioner that plaint does not disclose cause of action.

9. In the present case, originally, the suit is filed by the 1st respondent/plaintiff for partition of suit schedule property into two equal shares on the ground that she is the daughter of the 1st petitioner/1st defendant and the issues were also framed. That apart, admittedly, the application filed by the 1st respondent/plaintiff for amending the plaint in I.A.No.888 of 2017 was allowed by the Court below vide orders dated 04.12.2017 in I.A.No.888 of 2017 in O.S.No.2 of 2016. Aggrieved by the same, the 1st petitioner/defendants therein preferred Civil Revision Petition i.e., CRP No.7443 of 2017 before this Court for setting aside the order allowing amendment of plaint.

In the plaint, the cause of action for filing suit is mentioned as follows:

“16.Cause of Action: the cause of action for the suit arose on 07.08.1998 when the plaintiff was married to Nadipudi Surendra Kumar in T.T.D.Kalyana Mandapam, Eluru by the 1st defendant and his wife and from the plaintiff childhood when she was brought up by 1st defendant and his wife Appalanarasamma and all these days the plaintiff and her family members visiting the 1st defendant's house and the 1st defendant is performing in-laws duties towards the plaintiff's family and all these days the properties in joint possession of the plaintiff and the 1st defendant and since 2 years the 1st defendant is developing dislike towards the plaintiff and her family and not paying cultivating realization profits to the plaintiff on 28.07.2015 when the 1st defendant purchased item 10 of the plaint schedule property from the joint family amounts in the name of the 2nd defendant without informing the plaintiff and on 01.08.2014 when the 1st defendant alienated item No.8 and 9 schedule properties to the 2nd and 3rd defendants without informing the plaintiff and on 21.11.2015 when the plaintiff got issued the registered lawyer's notice to all the defendants and after receiving the notice, the defendants issued a reply notice with a false and untenable allegations and on all the subsequent days when the 1st defendant failed to come forward to partition the joint family properties i.e., Plaint Schedule properties which are in joint possession of the plaintiff and the 1st defendant and at Sakala Kottapalli, Pedapadu Mandal and Eluru, West Godavari District where the plaint schedule properties are situated within the territorial limits of this Honourable Court.”

I.A.No.888 of 2017 in O.S.No.2 of 2016, amendment to plaint was introduced by adding para 12-A, which reads as follows:

“12(A) The plaintiff humbly submit that Lanka Sitharamulu and Sarojini. Who are the natural parents of the plaintiff have given the plaintiff in adoption to the defendant No.1 and his wife after performing all the ceremonies of adoption and the 1st defendant and his wife have received the plaintiff in adoption. Thus the as an adopted daughter, the plaintiff is having right in the properties of the 1st defendant and she is entitled to a share in the properties mentioned in the schedule attached to the plaint.”

The above paragraphs in the plaint goes to show that it discloses cause of action. Whether the plaintiff can succeed as an adopted daughter or foster daughter of the 1st petitioner/1st defendant or not are all matters to be adjudicated upon by the trial Court while deciding the main suit, basing on the oral and documentary evidence to be let in by both parties and that it is for the 1st respondent/plaintiff to prove that there is valid adoption and not at this stage. It is made it clear that this Court has not expressed any opinion with regard to merits of the case and it is for the parties to prove their respective contentions before the Court below by letting evidence.

In view of above facts and circumstances, it cannot be said that plaint does not disclose cause of action. I do not see any reason to interfere with the order passed by the Court below in I.A.No.1369 of 2017 in O.S.No.2 of 2016 on 04.12.2017 and accordingly, the Civil Revision Petition is liable to be dismissed and accordingly dismissed.

The observations in this order are only made for the purpose of deciding this Civil Revision Petition against interlocutory order, as such, trial Court to decide the suit without

being influenced by any of the observations made herein. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

A.RAJASHEKER REDDY, J

02.05.2018

kvs



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Date: 02.05.2018

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