

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.872 of 2018

ORDER:

This civil revision petition is filed against the order dated 13-09-2017 passed in IA No.258 of 2009 in OS No.100 of 2001 in dismissing the said IA filed by the plaintiff-petitioner herein under Order 6, Rule 17 CPC seeking to amend the plaint.

2. The plaintiff-petitioner filed the suit for the relief of partition of the suit properties and during the pendency of the suit, her father (D1) died and as such, her mother (D3) and her sisters (D4 and D5) were added as parties in addition to (D2), her brother who was already on record. It is stated that on coming to know that certain other properties were also purchased from out of the joint family funds and liable to be partitioned, she sought for inclusion of those properties as item nos.6 to 9 in the plaint schedule. In the IA, (D2), brother of the plaintiff-petitioner herein filed counter stating that properties under item nos.6 to 9 were purchased by him from his own funds. The 2nd defendant has also taken certain other pleas which are not relevant for the present application.

3. Though notice is served to the respondents, none appeared for them.

4. Learned counsel for the plaintiff-petitioner states that the trial Court erred in dismissing the application on the ground that it is premature to consider whether the properties were purchased from out of the joint family nucleus or the self acquired properties of D2, as alleged by him in the counter filed in the IA, at this stage. It is also stated that to render complete justice between the parties, the trial Court ought to have allowed the amendment sought by the plaintiff-petitioner.

5. It is to be seen that the application is filed for amendment of the pleadings and the plaintiff wants to include certain items of properties, according to her, purchased from out of the funds of the joint family nucleus. The trial Court lost sight of the fact that the plaintiff never wanted to decide, now at this stage, whether the properties under item nos.6 to 9 are joint family properties or the self acquired property of D2 alone. The application was only to amend the pleadings and include the claim under item nos.6 to 9. The claim of the plaintiff-petitioner could be examined subject to proof and during the course of the trial. Amendment of pleadings and including the properties under item nos.6 to 9, in the facts and circumstances of the case, will not affect the rights of the

respondents-defendants nor it in any way changes the nature of the suit.

6. In the circumstances, the impugned order dated 13-09-2017 in IA No.258 of 2009 in OS No.100 of 2001 is set aside and the civil revision petition is allowed and consequently IA is allowed. Miscellaneous petitions, if any pending in this case shall stand disposed of. No order as to costs.

Dated: 20-04-2018
NRG

A.RAJASHEKER REDDY,J



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CIVIL REVISION PETITION No.872 of 2018

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Dated : 20-04-2018

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