

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.863 of 2018

ORDER:

1) Assailing the order, dated 08.12.2017, passed in I.A.No.435 of 2017 in O.S.No.41 of 2010 on the file of the III Additional Senior Civil Judge, Kakinada, wherein and whereunder an application filed by the petitioner to receive the returned written statement-cum-counter claim dated 16.04.2010 by substituting the written statement which was already filed on 26.08.2015, was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The petitioner herein is the second defendant in the suit. It is said that respondent Nos.1 to 4 herein, who are the plaintiffs in the suit, filed the above suit, in collusion with defendant Nos.3 to 7 seeking partition of the suit schedule property into 64 equal shares and to allot nine such shares to the plaintiffs, without any manner of right or title over the same. It is said that the mother of defendant No.2 purchased the suit schedule property in the name of his father in the year 1961 and his father during his life time executed a will deed in favour of his mother, who is the first defendant in this suit, bequeathing the suit schedule property. Thereafter, the father of the petitioner died and after his death, the Will dated 12.06.1993, is acted upon and the mother, who is

the first defendant, perfected her title over the suit schedule property. While things stood thus, the plaintiffs, who are the tenants, committed willful default in payment of rent. Hence, the first defendant filed O.S.Nos.1349 of 2004 and 292 of 2008 against the plaintiffs, seeking eviction and recovery of arrears of rents. On 25.04.2008, the plaintiffs vacated the premises and vacant possession was delivered to the first defendant, subsequently, both the suits were withdrawn. After withdrawal of the suit, the plaintiffs filed the present suit in collusion with defendant Nos.3 to 7, seeking partition of the schedule property. The first defendant filed her written statement-cum-counter claim on 16.04.2010. During pendency of the suit, the first defendant died on 14.02.2013. During her life time, she informed to the petitioner that she executed a registered will dated 25.04.2008 in his favour bequeathing the schedule property in favour of him and handed over the registered Will. By virtue of the said Will, he became an absolute owner of the schedule property. The Court declined to consider the counter-claim on the ground that the Court lacks pecuniary jurisdiction to try the counter claim. Hence, the petitioner filed his written statement on 26.08.2016 leaving his counter-claim along with a petition to substitute his written statement with counter claim. The trial Court returned written statement-cum-counter claim. Hence, the petitioner filed the present petition to receive the returned written statement-cum-counter claim dated 16.04.2010 for the

purpose of substituting the same with the written statement filed by the petitioner on 26.08.2016.

3) A counter came to be filed by the plaintiffs contending that the petitioner herein filed a petition on 15.12.2014 seeking permission to withdraw his written statement, which was allowed by the trial Court. Since no original written statement was on record, the question of receiving additional written statement would not arise.

4) After hearing both sides, the trial Court dismissed the said petition. Aggrieved by the same, the present Civil Revision Petition is filed.

5) The main ground urged by the learned counsel for the petitioner is that there is no justification for the trial Court to return his written statement-cum-counter claim. He further submits that an opportunity may be given to the petitioner to avail his remedy in case if he has any title or any share in the property, which is sought to claim in the written statement-cum-counter claim.

6) Without going into the merits of the case and having regard to the submission made by the learned counsel for the petitioner, the Civil Revision Petition is disposed of at the admission stage, giving liberty to the petitioner to avail the remedy available under law with regard to his right and share in the property referred to in the written statement-cum-counter claim.

7) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

23.02.2018
gkv

