

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.1008 OF 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 08.12.2017 passed in I.A.No.1871 of 2017 in O.S.No.56 of 2013 on the file of the Principal District Court, Kadapa.

2. Heard the learned counsel for both parties.

3. The facts leading to filing of the present revision are briefly as follows:

The respondents have filed O.S.No.56 of 2013 on the file of the Principal District Court, Kadapa, against the petitioners for partition of the suit schedule property. During pendency of the suit, the respondents filed I.A.No.1871 of 2017, under Order VI Rule 17 C.P.C., seeking to amend the plaint to include one more property in the suit schedule. The petitioners filed a counter *inter alia* contending that the petition filed by the respondents is not maintainable. The trial Court, after affording a reasonable opportunity to both parties, allowed the petition. Hence, the revision.

4. Learned counsel for the petitioners strenuously submitted that the trial Court has not considered the proviso to Order VI Rule 17 C.P.C. and allowed the petition on untenable grounds. She further submitted that the impugned order is not sustainable either on facts or in law.

5. *Per contra*, learned counsel for the respondents submitted that the trial Court considered the case law and allowed the petition. He further submitted that there are no grounds to interfere with the impugned order.

6. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

7. It is an admitted fact that the petitioners and respondents are interrelated to each other. It is also an admitted fact that while filing the suit, for one reason or other, the respondents have not shown one item of the property in the suit schedule. At the time of arguments, learned counsel for both parties submitted that after completion of the respondents/plaintiffs’ side evidence, the matter was posted for petitioners/defendants’ side evidence. After filing of the chief examination affidavit of DW.1, the respondents filed the present interlocutory application. It is needless to say that a party to the proceedings, who files an application under Order VI Rule 17 C.P.C., after commencement of the trial, has to satisfy the ingredients of proviso to Order VI Rule 17 C.P.C. While disposing of the amendment petition, the Court has to give a specific finding whether the petitioners have satisfied the basic ingredients of proviso to Order VI Rule 17 C.P.C. This Court carefully perused the order passed by the trial Court. As rightly pointed out by the learned counsel for the respondents, the trial Court has considered the case law and passed the order. The case law considered by the trial Court pertains to prior to 2002. The amendment to Civil Procedure Code came into force in the year 2002. As rightly

pointed out by the learned counsel for the petitioners, the trial Court has not given a specific finding with regard to proviso to Order VI Rule 17 C.P.C. The trial Court ought to have given a specific finding on this aspect while disposing of the petition filed under Order VI Rule 17 C.P.C.

8. Having regard to the facts and circumstances of the case, this Court is of the considered view that it is a fit case to set aside the impugned order and remand the matter to the trial Court for fresh disposal.

9. In the result, the Civil Revision Petition is allowed, setting aside the order dated 08.12.2017 passed in I.A.No.1871 of 2017 in O.S.No.56 of 2013 on the file of the Principal District Court, Kadapa, and remanding the matter to the trial Court. The trial Court is hereby directed to dispose of I.A.No.1871 of 2017 afresh, after affording a reasonable opportunity to both parties, in the light of proviso to Order VI Rule 17 C.P.C. There shall be no order as to costs.

10. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 28.11.2018
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