

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.1053 of 2013

ORDER:

Heard Mr.A.V.K.S.Prasad for revision petitioner.

The 1st defendant in O.S.No.3 of 2009 is the revision petitioner. The 1st respondent filed O.S.No.3 of 2009 for partition and separate possession of properties described in plaint A and B schedules. The 1st respondent prays for partition and separate possession of an extent of 4/9th share in the suit schedules A and B. The revision petitioner is contesting the suit both on maintainability of suit for partition and also the entitlement of 1st respondent for partition or any share of plaint schedules A and B.

The revision petitioner alternatively contends that a few of the properties held by the 1st respondent are standing in the name of 1st respondent's wife or siblings and these properties are also treated as properties belonging to Hindu undivided family and these properties are partitioned along with plaint A & B schedules. The trial Court keeping in view the principal issues for decision and also the items which are available for partition framed the following issues.

- “1. Whether the plaint A and B schedule properties are the ancestral and joint family properties of D.1 & D.2 as pleaded by plaintiff as they are only ancestral properties but not joint family properties as contended by D.1, D.4 & D.6?
2. Whether the defendant No.2 had no legal right to gift away schedule-A property in favour of defendant No.1 by executing gift settlement deed bearing document No.2177/2006, dt.27.06.2006 and if so, it is null and void and not binding on the plaintiff?
3. Whether the schedule A to H properties shown in the written statement of D.1 are also liable for partition in case it is held that the plaintiff is entitled for partition and separate possession of his alleged 4/9th share in plaint A and B schedule properties?
4. whether there is Municipality but not Municipal Corporation in Koratla and if so, the suit is bad for mis-joinder of parties?
5. Whether the suit is barred by limitation?
6. Whether the plaintiff is entitled for 4/9th share in the plaint A and B schedule properties and if so, is entitled for partition and separate possession of that 4/9th share in the properties?
7. To what relief?”

The revision petitioner filed I.A.No.199 of 2012 for amendment of plaint to include the schedules C to H in the plaint. The 1st respondent opposed the application. The learned trial Judge through the order impugned in the Civil Revision Petition dismissed the application. Hence, the Civil Revision Petition.

Mr.Prasad contends that the order impugned in the Civil Revision Petition fails to appreciate the principle applied for partition viz., partition of all the properties of a Joint Hindu family and in the case on hand, the effort of revision petitioner is to present comprehensive schedules of all the properties which are partitioned, in the event of parties establishing their case. The trial Court committed serious illegality in recording conclusion challenged in the Civil Revision Petition and therefore prays for allowing the Civil Revision Petition.

I have perused the record and noted the submissions of Mr.Prasad. At the outset this Court is constrained to remark that the learned trial Judge while considering the interlocutory application filed under Order 6 Rule 17 ought not to have gone into the merits of the proposed amendment. Therefore, to the extent of findings dealing with the character and nature of properties covered by schedules C and H, they are set aside as premature and beyond the prayer in I.A.No.199 of 2012.

Now coming to the request of petitioner for amending the schedules, this Court is of the view that the revision petitioner has already pleaded as to how and why the properties standing in the name of 1st respondent are also

available for partition. The 1st respondent in the event of proving his claim for partition, by taking into consideration the case of revision petitioner, the other properties are also partitioned. The issues are already excerpted and need no reiteration.

This Court is of the view that the plea of the revision petitioner for partition of properties described in the written statement is taken note and an issue is also framed. Therefore, while considering the said issue, the Court upon trial and evidence adjudicate the issues. Therefore, the amendment to include the properties as plaint schedule is not warranted. The order impugned in the revision though is confirmed, the findings recorded on the character and nature of properties now proposed to be included in the schedules C and H are set aside.

The trial Court is directed to consider and dispose of O.S.No.03 of 2009 as expeditiously as possible preferably within two months from the date of receipt of copy of this order. The petitioner is given liberty to place the copy of this order before the trial Court by way of a memo and seek expeditious disposal.

Civil Revision Petition dismissed with the above observations. No order as to costs.

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

Dt: 21.08.2018
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S. V. BHATT, J

