

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.3213 of 2015

ORDER:

This civil revision petition is filed questioning the order, dated 02.02.2015, passed in I.A.No.203 of 2014 in I.A.No.95 of 2014 in O.S.No.1 of 2009, by the Senior Civil Judge, Zaheerabad.

The suit O.S.No.1 of 2009 is filed for partition of the suit schedule property. A preliminary decree was passed. At the stage of the final decree enquiry, I.A.No.203 of 2014 was filed under Order I Rule 10 CPC by the two petitioners, claiming to be children of the second wife of the defendant. It is their contention that they are legal heirs of the defendant in the suit and that they are entitled to a share in the suit schedule property. The respondents, who are the plaintiffs in the suit, filed a counter and contested the matter. The defendant-father did not contest the interlocutory application. The said interlocutory application came to be allowed and the orders, dated 02.02.2015, which are now impugned, are passed.

This court has heard the learned counsels, appearing for the petitioners and the respondents respectively.

Learned counsel for the petitioners contends that respondents Nos.1 & 2 are not necessary or proper parties to the proceedings. It is his contention that they are not the children of the defendant at all and that they are born to another father. Therefore, it is his contention that they cannot be added as parties to the proceedings. The learned counsel also attempted to rely upon certain documents which are filed along with the revision petition to show that respondents Nos.1 and 2 are not the

children of the defendant in the suit at all. Therefore, it is his contention that the entire application is misconceived and the lower court committed an error in allowing the application.

The learned counsel for the respondents, on the other hand, points out that the 1st defendant did not file any counter opposing the application. The 1st defendant did not choose to contradict the stand of respondents Nos.1 and 2. The learned counsel also points out that paragraph Nos.8, 9 and 10 of the impugned order would indicate that the lower court applied its mind to the facts and circumstances of the case and also gave an opportunity to the present revision petitioners to contest the “status” of the parties who are seeking to come on record. He points out that in paragraph No.10 of the impugned order, the lower court gave the liberty to the contesting respondents, who are the plaintiffs in the suit, to file all material to defeat the claim of respondents Nos.1 and 2 herein. The learned counsel also points out that the documents which are now relied upon in the present revision petition are not part of the lower court record and they cannot be relied upon for the purpose of deciding the correctness or otherwise the impugned order.

After hearing both the learned counsel, this court is of the opinion that there is sufficient force and strength in the submissions made by the learned counsel for respondents Nos.1 and 2. The documents which are now sought to be relied in this court are not tested in the cross examination. The truth or veracity of the contents of these documents have to be established independently and this court cannot pronounce on the legitimacy or the status of respondents Nos.1 and 2 on the basis of some documents which are now produced. As rightly pointed out by the learned counsel for the respondents the lower court in the impugned

order held that the petitioners therein should be given an opportunity to lead evidence to sustain their claim and the contesting respondents therein can also contest the claim of the petitioners therein. In this view of the matter, no prejudice will be caused to the revision petitioners at this stage merely because respondents Nos.1 and 2 are added, as they have to prove their claim by leading evidence, as observed by the lower court.

Therefore, this court is of the opinion that there are no infirmities in the exercise of jurisdiction by the court below. The civil revision petition in the opinion of this court is devoid of merits and the same is accordingly dismissed. No order as to costs.

As the matter is an old matter, the counsel for the revision petitioners prays for an early hearing and disposal of the matter. The learned counsel for the respondents also agrees that his clients will cooperate for early disposal of the matter. Therefore, the lower court is directed to proceed with the hearing of the final decree petition on priority and complete the said exercise as expeditiously as possible, preferably within a period of 3 months from the date of receipt of a copy of this order, after giving an opportunity of being heard to both the parties. Needless to say that the court below shall proceed with the hearing and finalizing the final decree petition, without in any way being influenced by what is mentioned in this order.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 27.11.2018
Dsr