

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.4042 of 2017

ORDER:

This CRP is directed at the instance of the petitioners/defendants 1 and 2 against the order dated 30.06.2017 in I.A.No.92 of 2014 in O.S.No.174 of 2014 passed by the Senior Civil Judge, Shadnagar, allowing the petition filed under Order VI Rule 17 CPC by respondents/plaintiffs to replace Sy.No.100/AA measuring Ac.2-26gts with Sy.No.308 measuring Ac.3-34gts with consequential amendments.

2) The plaintiffs filed suit for partition of the following plaint schedule properties: i)Sy.No.100/AA measuring Ac.2-26gts and ii)Sy.No.283 measuring Ac.7-18gts situated in the limits of Regadi Chilkamarri village, Kondurg Mandal, Mahabubnagar District. Later they filed I.A.No.92/2014 stating that from the written statements filed by the defendants, they came to know that the ancestors of the plaintiffs exchanged Sy.No.100/AA with Sy.No.308 in an extent of Ac.3-34 gts with the ancestors of respondents/defendants. They also came to know that there were some alienations in respect of Sy.No.308. Hence they sought for amendment of the plaint to replace Sy.No.100/AA measuring Ac.2-26gts with Sy.No.308 measuring Ac.3-34gts and consequential amendments. The defendants opposed the petition *inter alia* contending that there was no exchange of Sy.No.100/AA with Sy.No.308 as pleaded by the plaintiffs and plaintiffs have no right in Sy.No.308. The Trial Court in the impugned order observed that the exchange aspect has to be decided only after the trial and the amendment sought for will not effect

the pecuniary jurisdiction of the Court. The Trial Court also observed that the trial has not yet been commenced and the petition was filed in the year 2012 itself. Accordingly, the Trial Court allowed the petition holding that the amendment was essential to avoid multiplicity of proceedings.

Hence the CRP.

3) Heard Sri G.Kalyan Chakravarthy, learned counsel for petitioners and Sri K.Ramachandra, learned counsel for respondents 1 to 5. Though notice to R.6 was served but there is no representation on his behalf. Notices sent to R.7 and R.8 were not yet returned.

4) Learned counsel for petitioners tried to impress upon the Court that the amendment sought for is a belated one and there was no exchange of the properties as pleaded in the amendment petition and therefore the amendment was not essential. It was also sought to project that the amendment sought for does not satisfy the requirements under Order VI Rule 17 CPC. He placed reliance on the following decisions:

i) ***P.Durga Reddy and another v. B.Yadi Reddy***¹

ii) ***Mohinder Kumar Mehra v. Roop Rani Mehra and others***²

5) It must be said, this Court is not convinced with the arguments advanced by learned counsel for petitioners. By way of proposed amendment, the plaintiffs sought to replace Sy.No.100/AA measuring

¹ (2015) 4 ALD 420 = 2014 SCC Online Hyd 1079

² 2017 SCC Online SC 1451

Ac.2-26gts with Sy.No.308 measuring Ac.3-34gts on the plea that on seeing the written statement filed by defendants, they came to know about the exchange made by their predecessors. They filed the petition in the year 2012 itself. By which time, trial was not commenced. In a suit for partition, one of the essential requirements is that the plaintiffs have to place before the Court those properties which are liable for partition. This will avoid the multiplicity of the proceedings. In the instant case, the plea of the plaintiffs is that their ancestors have exchanged Sy.No.100/AA with Sy.No.308 in an extent of Ac.3-34 gts. Ofcourse the defendants denied such exchange. Therefore, whether, indeed, there was such an exchange and whether plaintiffs have any right in Sy.No.308 in an extent of Ac.3-34gts will be an issue to be dealt with by the Trial Court during the trial. As rightly observed by the Trial Court, to avoid multiplicity of the proceedings, the amendment could be allowed. Moreover the amendment was sought for even before commencement of the trial. The Trial Court also observed, the proposed amendment will not take away the pecuniary jurisdiction of the Court. In that view, I find no illegality or irregularity in the order impugned. The cited decisions will not advance the cause of the petitioners.

6) Accordingly, this CRP is dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 24.01.2018

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