

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.4510 of 2018

10.08.2018

Between:

Smt.Yelamanchili Naga Mallika and another

..Petitioners

and

Smt.Yelamanchili Pramila and others

..Respondents

Counsel for the petitioners: Mr.S.Subba Reddy

Counsel for the respondents: --

The Court made the following:



ORDER:

This Civil Revision Petition arises out of order, dated 04.06.2018, in I.A.No.682 of 2016 in O.S.No.108 of 2014 on the file of the learned Principal Senior Civil Judge, Gajuwaka.

2. I have heard Mr.S.Subba Reddy, learned counsel for the petitioners, and perused the record.

3. Respondent Nos.1 and 2 filed the aforementioned suit, *inter alia*, for declaration that respondent No.1 is the joint owner of half undivided share in the schedule property. Before the trial is commenced, they have filed I.A.No.682 of 2016 and under Order VI Rule 17 C.P.C. seeking amendment of the pleadings by deleting/adding certain pleadings at para III(e) of the plaint and also amendment of plaint A and B schedules. The effect of these amendments would be that for the first time, respondent Nos.1 and 2/plaintiffs are setting up a Will apart from addition of certain facts, which were not stated in the plaint, and amendment to the schedules is sought by substituting the words “the western part” for the words “half undivided share” as prayed in the original prayer. The Court below has allowed the I.A. Feeling aggrieved by the same, defendant Nos.1 and 2 filed this revision petition.

4. The learned counsel for the petitioners/defendant Nos. 1 and 2 has submitted that by allowing the amendment, the whole cause of action is changed. To buttress this submission, the learned counsel has referred to paragraph 4 of the affidavit filed in support of the I.A., wherein plaintiff No.1 has set up another Will, dated 08.09.2010.

5. On a perusal of the proposed amendment referred to in the affidavit filed in support of I.A., I find the submission of the learned counsel for the petitioners as wholly incorrect. Though in paragraph 4 of the affidavit, respondent No.1 has referred to Will, dated 08.09.2010, the averment to that effect has not been incorporated in the proposed amendment. Therefore, neither the nature and character of the suit nor the cause of action originally pleaded is proposed to be altered by the proposed amendment.

6. The judgment of this Court in **G.S.Prakash v. Polasa Hanumanlu**¹, on which heavy reliance is placed by the learned counsel, is of no avail to the petitioners as this Court, while elaborately discussing the instances where amendments are to be allowed, held that such amendments are not permissible where they alter the nature and character of the suit and

¹ (2015) 1ALD 270=(2015) 2 ALT 594

substitute or introduce new cause of action. The obvious purpose in not allowing such amendments is that on the basis of new cause of action and in the guise of amendment, no relief, which would otherwise has been barred by limitation, shall be allowed.

7. In the instant case, as noted hereinbefore, the petitioners neither pleaded existence of Will, dated 08.09.2010, in the proposed amendment nor sought amendment to the cause of action part of the plaint. Even otherwise also, the fresh cause of action pertains to a date much subsequent to Will, dated 12.03.1996, and therefore, no prejudice would be caused to the petitioners on this account.

8. In the light of the above facts, I do not find any merit in this Civil Revision Petition and the same is, accordingly, dismissed.

9. As a sequel to dismissal of the Civil Revision Petition, I.A.No.1 of 2018 filed by the petitioners for interim relief stands dismissed as infructuous.

10th August, 2018
GHN

C.V.NAGARJUNA REDDY, J