

HON'BLE SRI JUSTICE N.BALAYOGI

CIVIL REVISION PETITION No.5462 of 2012

ORDER:

Petitioner – respondent No.6 (plaintiff) aggrieved by the order dated 03.09.2012 passed in I.A.No.976 of 2011 in O.S.No.105 of 2008 on the file of the Principal Junior Civil Judge, Dhone, the present Civil Revision Petition is filed.

2. Petitioner – respondent No.6, who is the plaintiff, filed the suit for partition and separate possession of plaint 'A' and 'B' schedule properties. It is pleaded in the affidavit that respondent Nos.3 to 7 - defendant Nos.1 to 5 filed their written statement stating that their sons colluded together and filed a suit but there was division of properties between defendant No.1 and his elder brother, V.Ramanna; later between defendant No.1 and his five sons and they sold away the properties; there is no land to be partitioned; but, because of non-availability of relevant documents and due to misplacement, details could not be pleaded. He further pleaded that the senior counsel engaged by them advised to put their pleas in more detail form by way of amendment.

3. Petitioner herein – plaintiff contended that respondent Nos.1 and 2 got Vakalat filed and had taken time for filing written statement and finally written statement was filed on 29.09.2011 on payment of costs of Rs.50/-. Revision petitioner – plaintiff filed counter stating that the respondent Nos.3 to 7 - defendant Nos. 1 to 5 have taken 16 adjournments for cross-examination of PW.1. He further contended that, as

the trial has commenced long back, the petition is not maintainable and, if the petition is allowed, the revision petitioner will be constrained to file rejoinder and the suit will be posted to back date to trial stage. He also contended that the proposed amendment would change the nature and cause of action; and the petition is silent about due diligence in filing petition.

4. Now the point that arises for consideration is “whether the order of the Trial Court suffers from legal infirmity warranting interference of this Court.”

5. Learned counsel for the petitioner – plaintiff (respondent No.6) contended that the respondent Nos.3 to 7 – defendant Nos.1 to 5 having taken 16 adjournments for cross-examination of PW.1, filed the written statement seeking proposed amendment to change the nature and cause of the suit; and the Trial Court allowed the application without assigning any valid and cogent reasons.

6. Per contra, respondent Nos.1 and 2 – defendants 6 and 7 (petitioners in I.A) contended the basic aspects of defence regarding collusion of defendants, the division of properties held between D.1 and his elder brother, V.Ramanna, and later selling of properties by D1 and his five sons

7. A reading of the written statement goes to suggest that defendant No.1 – respondent No.3 is no other than the father of the plaintiff; defendant No.1 got five sons plaintiff and defendant No.2 to 5; defendant No.1 has one brother viz

V.Ramanna who died and has got one son by name Vattivella Ramesh, who died about 40 years back; defendant No.1 and his brother's son viz. Vattivella Ramanna, got divided the properties and are in possession and enjoyment over their respective shares. Petitioner – plaintiff exchanged his share in Sy.No.305 with his brother defendant No.5 and obtained share of defendant No.5 in Sy.No.316/3; defendant No.5 got two shares in Sy.No.305; and, since the date of purchase, defendant Nos.3 to 7 have been in possession and enjoyment of land in Sy.Nos.305 and 92 of an extent of 10.72 cents for valid considerations and got registered; defendant Nos.3 to 7 spent huge amount for developing land as the land increased and the plaintiff with mala fide intention filed the suit. Defendant No.2 filed suit against defendants i.e. O.S.No.105 of 2010.

8. In fact, the trial has commenced and the cross-examination of PW.1 is yet to be completed. The revision petitioner – plaintiff filed the suit for partition and separate possession of plaint schedule 'A' and 'B' properties seeking the relief against the petitioners – respondents. Hence, allowing amendment to the written statement would neither change the cause of action nor nature of the suit. In the counter, petitioner was very conscious that, in case, amendment is allowed, he has opportunity to file rejoinder. Accordingly, by allowing amendment, no prejudice or loss would be caused to the revision petitioner and he shall have opportunity of filing rejoinder, re-examination of PW.1 and framing necessary

issues, if the Court feels necessary to resolve the dispute. Therefore, by allowing such application, no prejudice would be caused to the petitioners. I do not see any illegality or error warranting interference of this Court with the order under revision.

9. The Civil Revision Petition is, accordingly, dismissed confirming the order 03.09.2012 passed in I.A.No.976 of 2011 in O.S.No.105 of 2008 by the Principal Junior Civil Judge, Dhone.

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

Dt:14.11.2018
usd



N.BALAYOGI,J