

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2647 of 2017

ORDER:

1 This petition is filed under Article 227 of the Constitution of India, challenging the order dated 12.04.2017 passed in I.A.No.495 of 2015 in O.S.No.179 of 2013 on the file of the Court of the Senior Civil Judge, Narsapuram.

2 Heard the learned counsel for both parties.

3 Petitioner is the defendant in the suit. The respondent filed O.S.No.179 of 2013 on the file of the Court of the Senior Civil Judge, Narsapuram against the petitioner for specific performance of an agreement of sale dated 07.03.2010. During the pendency of the suit, the petitioner filed I.A.No.495 of 2017 under Order VI rule 17 CPC for amendment of the written statement. The respondent filed counter *inter alia* contending that the petition is filed only to drag on the proceedings. The trial Court after affording a reasonable opportunity to both parties, dismissed the petition. Hence the present Civil Revision Petition.

4 The point for consideration is whether there is any irregularity, illegality or impropriety in the impugned order?

5 A perusal of the record reveals that the petitioner filed the petition after filing of the chief examination affidavit by the respondent. In Para No.3 of the written statement the petitioner has taken a specific plea that he is the absolute owner of the suit schedule property. In the proposed amendment, the petitioner is seeking to amend the written statement to the effect that the suit

schedule property is not his self acquired property but it is his ancestral property. In the petition the petitioner pleaded that he is having three daughters and one son. In order to appreciate the rival contentions, it is not out of place to extract hereunder para No.7 of the counter filed by the respondent.

“It is true that the plaint schedule property is not the self acquired property of the petitioner and it was inherited by the petitioner from his ancestors. It is true that the petitioner is having 3 daughters and 1 son and all his children are majors.”

6 A perusal of the above para clearly shows that whatever pleaded by the petitioner in the amendment petition is fully supported by the respondent in his counter. It is needless to say that a party to the proceedings is not entitled to take mutually self destructive pleas by way of amendment. In the present case, the petitioner has not taken inconsistent pleas, as observed by the trial Court. The finding recorded by the trial Court that the petitioner has taken mutually self destructive pleas is not sustainable on facts. As observed earlier, the respondent himself has admitted in his counter whatever pleaded by the petitioner in the amendment petition. If the petition is dismissed, it may not be possible for the petitioner to ventilate his legitimate and legal grievance. Even if the petition is allowed, the nature of the suit will not change and it will remain intact. In such circumstances, if the impugned order passed by the trial Court is allowed to stand, certainly, it would amount to miscarriage of justice.

7 Having regard to the facts and circumstances of the case, this Court is of the considered view that this is a fit case to allow the Civil Revision Petition since the order passed by the trial Court is not sustainable either on facts or in law.

8 In the result, this Civil Revision Petition is allowed, setting aside the order dated 12.04.2017 passed in I.A.No.495 of 2015 in O.S.No.179 of 2013 on the file of the Court of the Senior Civil Judge, Narsapuram. Consequently, I.A.No.495 of 2015 is allowed, permitting the petitioner to amend the written statement. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

T. SUNIL CHOWDARY, J

Date: 11.12.2018
Kvsn

