

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No.4878 of 2018

ORDER :

This Civil Revision Petition is arising out of the order dated 23.07.2018 in I.A.No.1327 of 2017 in O.S.No.238 of 2014 passed by the Additional Senior Civil Judge, Kadapa, YSR Kadapa District, dismissing the application filed by the petitioners under Order VI Rule 17 of C.P.C., to permit them to amend the plaint by including the properties under Item Nos.3 and 4 of suit schedule properties.

The petitioners are plaintiffs and the respondents are defendants in the suit O.S.No.238 of 2014.

The petitioners have filed a suit in O.S.No.238 of 2014 against the respondents for partition of the suit schedule properties into 5 equal shares and to allot two such shares to them, stating that they are in joint possession and enjoyment of the suit schedule properties. After adducing the evidence of the plaintiffs, when the matter was posted for adducing the defendant's side evidence, the petitioners have filed the present application in I.A.No.1327 of 2017 in O.S.No.238 of 2014 under Order VI Rule 17 of C.P.C., to permit them to amend the plaint by including the properties under Item Nos.3 and 4 of suit schedule properties, which were not shown in the original schedule of properties for partition

when the suit was filed. Respondent Nos.1 to 3 reported no counter. Respondent No.4 filed counter denying the allegations in the petition stating that respondent No.1 executed an agreement of sale in favour of respondent No.4, but failed to comply with the terms of the agreement. Therefore, respondent No.4 filed a suit in O.S.No.38 of 2009 on the file of I Additional District Judge, Kadakpa, for specific performance against respondent No.1 in respect of item No.2 of the suit schedule properties and the same was decreed on 12.03.2013 in favour of respondent No.4. After passing the decree, respondent No.1 preferred an appeal before this Court and the same is pending. It is the case of respondent No.4 that the petitioners, being the sons of respondent No.1, have colluded with each other and filed this petition for partition and for separate possession of the suit schedule properties, though they got knowledge of passing of the decree for specific performance in respect of item No.2 of the suit schedule properties. It is stated that the petitioners are nothing to do with item No.2 of the suit schedule properties, but they filed the suit falsely stating that the said properties are yet to be partitioned and that the petitioners were never in joint possession and enjoyment of item Nos.3 and 4 of the said properties.

After consideration of the material on record, through the impugned order dated 23.07.2018, the trial Court

dismissed the said application on the ground that the petitioners have not shown item Nos.3 and 4 of the suit schedule properties when they filed the suit and, therefore, at this belated stage, it is not inclined to add those properties in the plaint schedule. Aggrieved by the same, the petitioners have filed the present Civil Revision Petition.

Heard Sri Karri Murali Krishna, learned counsel for the petitioners. Though, the name of Sri Chillara Praveen, Advocate, is appearing on behalf of respondent Nos.1 to 3, there is no representation. Though, notice is served to respondent No.4, none appears on her behalf. Perused the material on record.

The settled legal position is that, in a suit for partition, all the properties pertaining to the joint family must be added in the schedule of properties. The petitioners wanted to add item Nos.3 and 4 of the suit schedule properties subsequently stating that they belong to joint family properties. No doubt, they could not add those properties initially when they filed the suit. Respondent No.4 claims that he filed a suit O.S.No.38 of 2009 for specific performance against respondent No.1 in respect of item No.2 of the suit schedule properties and the same was decreed on 12.03.2013 in his favour. Though, it is stated that the petitioners are nothing to do with item No.2 of the suit schedule properties and that they were never in joint possession and enjoyment of item

Nos.3 and 4 of the said properties, in view of the settled legal position, the trial Court ought to have allowed the application in I.A.No.1327 of 2017 by adding item Nos.3 and 4 to the suit schedule properties, so that the parties may adduce evidence to prove whether those properties belong to joint family properties or not, so that they can be subjected for partition. Therefore, the impugned order passed by the trial Court does not appear to be just and reasonable and the same is liable to be set aside.

For the foregoing reasons, the impugned order dated 23.07.2018 passed by the trial Court is set aside and the trial Court is directed to add the proposed item Nos.3 and 4 of suit schedule properties to the list of suit schedule properties for partition.

Accordingly, this Civil Revision Petition is allowed. No order as to costs.

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

30.11.2018.
Msr

GUDISEVA SHYAM PRASAD, J

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