

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.329 of 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 14.12.2015 passed in I.A.No.822 of 2015 in O.S.No.65 of 2010 on the file of III Additional District Court, Bhimavaram.

2. Heard the learned counsel appearing for both the parties and perused the material available on record.

3. The facts leading to filing of the present revision in brief, are as follows:

The petitioner filed O.S.No.65 of 2010 on the file of the III Additional District Court, Bhimavaram, for partition of 'A' and 'B' schedule properties. Pending suit, the petitioner filed I.A.No.822 of 2015 under Order VI Rule 17 CPC seeking to amend the plaint to include 'C' schedule properties. The respondents filed counter *inter alia* contending that the petition is not maintainable either on facts or in law. The trial Court after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

4. The point that arises for consideration is: 'Whether there is any illegality, irregularity or impropriety in the impugned order?'

5. It is an admitted fact that the petitioner and the respondents are inter-related to each other. The petitioner filed

O.S.No.65 of 2010 against the respondents for partition of 'A' and 'B' schedule properties only. At the stage of cross-examination of D.W.1, the petitioner filed the present petition to include 'C' schedule properties.

6. It is the contention of the petitioner that he and his brother got the suit schedule properties under a partition deed dated 31.05.1955. As rightly pointed out by the learned counsel for the petitioner, the petitioner referred about this document in the pleadings. The petitioner also filed the partition deed along with the plaint. A perusal of the affidavit reveals as if the petitioner came to know about the partition deed dated 31.05.1955 one week prior to filing of the petition. The averments made in the affidavit are quite contrary to the pleadings in the plaint. A perusal of the record reveals that the petitioner filed O.S.No.105/1982 against the respondents for partition of the suit schedule properties therein. After full fledged trial, the trial Court dismissed the suit. Both counsel submitted that the petitioner preferred an appeal challenging the decree and judgment in O.S.No.105 of 1982 and the same was dismissed. After dismissal of the appeal, the petitioner filed the present suit for partition.

7. This Court carefully perused the A, B and C schedule properties in order to ascertain whether the findings recorded by the trial Court are sustainable or not? Out of eight items in 'C' schedule properties, five items are covered in 'A' and 'B' schedules. Items - A B C of 'C' schedule properties are not

covered in 'A' and 'B' schedule properties. If the contention of the petitioner is taken into consideration, in all probability, items- A B and C of 'C' schedule may be the properties covered under the partition deed dated 31.05.1955. There is no pleading in the affidavit that items - A B C of schedule 'C' are part and parcel of the partition deed dated 31.05.1955. In the absence of such a pleading, it is not possible for this Court to hold that items - ABC of 'C' schedule are the part and parcel of partition deed dated 31.05.1955. Without establishing such a fact, the petitioner is not entitled to seek amendment of the plaint. It is a settled principle of law that at the time of passing of final decree, the Court has to allot the shares to the plaintiff and defendants by good and bad qualities by metes and bounds. In the absence of schedule, it may not be possible for the Court to pass a final decree in accordance with law. For the reasons best known, the petitioner did not mention the boundaries in the 'C' schedule. The trial Court has considered this aspect in right prospective. It is an admitted fact that the petitioner filed O.S.No.105 of 1982 for partition. Again the petitioner filed the present suit for partition.

8. A perusal of the record reveals that the petitioner and his brothers have partitioned the family properties under a registered partition deed in the year 1962. All these facts clearly indicate that the petitioner has not approached the Court with clean hands. The possibility of filing this type of petitions one after the other in order to protract the matter as far as possible cannot be ruled out completely. If this Court extends

its helping hand to this type of persons, there may not be any end to the litigation. This Court is very much conscious, that the Court shall not dismiss the petitions at the cost of substantial justice. Rendering of substantial justice to the parties does not mean blindly swallowing the contentions of parties and allowing the petitions in one way or other.

9. Admittedly, the petition was filed at the fag end of the trial. It is needless to say a party to the proceedings is entitled to file a petition under Order VI Rule 17 CPC for amendment of pleadings even after commencement of trial subject to proviso to Order VI Rule 17 CPC. I have carefully perused the affidavit in order to ascertain whether the petitioner has taken a little bit care to satisfy the basic ingredients of proviso to Order VI Rule 17 CPC. There is no pleading in the affidavit that despite due diligence, he could not file the amendment petition at an earlier point of time. Whether the petition is hit by Order II Rule 2 CPC or not requires oral and documentary evidence. While deciding the interlocutory applications, the Court shall not express any opinion touching the merits of the main case in view of pendency of suit. This Court is not inclined to express any opinion on Order II Rule 2 CPC.

10. Viewed from any angle, the petitioner is very much aware of the partition deed dated 31.05.1955. For the reasons best known, the petitioner did not include the items – A, B, C of schedule ‘C’ at the time of filing of the suit. The affidavit filed by

the petitioner is bereft of basic ingredients of proviso to Order VI Rule 17 CPC.

11. The trial Court considered the oral and documentary evidence and material available on record in right prospective and dismissed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. If the impugned order is not supported by reasons much less cogent and valid reasons, then this Court can interfere. I am fully endorsing with the findings recorded by the trial Court. Viewed from any angle, the petition filed by the petitioner is not maintainable. There is no illegality, irregularity or impropriety in the order of the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the petition is liable to be dismissed.

12. In the result, the Civil Revision Petition is dismissed. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed. The trial Court is hereby directed to dispose of the matter without being influenced by the findings of this Court.

T.SUNIL CHOWDARY, J

30.11.2018
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