

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.6500 of 2018

ORDER:

Heard learned counsel for the petitioner and Sri M.Madhava Reddy, learned counsel for 2nd respondent.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.04-10-2018 in I.A.No.216 of 2018 in O.S.No.61 of 2011 of the Senior Civil Judge, Jangaon, Telangana.

3. Petitioner is the plaintiff in the said suit. She filed the said suit for partition of the plaint schedule properties and for 1/4th share in the said properties. Originally in the plaint schedule, petitioner had mentioned only A and B schedule properties.

4. Written Statement was filed by the 2nd defendant opposing the claim for partition and contending that they are exclusive properties of the 2nd defendant. It is also stated in para-5 of Written Statement that all the properties of the joint family were not included in the plaint schedule.

5. After issues were framed and trial commenced, the petitioner was examined as P.W.1 and was also cross examined and the evidence on the petitioner side had been closed. Thereafter, D.W.1 was examined in chief and also cross examined in part.

6. At that stage, petitioner filed I.A.No.216 of 2018 to amend the plaint by including C, D and E schedules also alleging that during her cross examination by the defendants' counsel, on 18-03-2015, there was a

suggestion that there were other properties owned by the petitioner's father also, that the petitioner then made enquiries and filed the said application.

7. This application was opposed by the respondents contending that there is already a plea taken in the Written Statement of the 2nd defendant that the suit did not include all the properties of the family, and the suit should be dismissed for non-inclusion of all the properties and if the petitioner had knowledge with these properties since 2015, she ought to have taken steps earlier.

8. By order dt.04-10-2018, the Court below dismissed the said application stating that the suit has been pending for a long time and three years after cross examination of P.W.2, the present application has been filed that too after D.W.1 was cross examined in part. It held that the Court cannot encourage a party to keep quiet till the end and then come forward with an amendment to bring a surprise on the other party. It also noted that there was specific plea in the Written Statement that all the properties of the father of the petitioner were not included and in spite of knowing the same, no steps were taken by the petitioner to add all the properties by amending the plaint before the commencement of the trial in the suit.

9. Challenging the same, this Revision Petition is filed.

10. Though the learned counsel for the petitioner contended that the Court below ought to have allowed the application for amendment and that otherwise, grave and irreparable loss will be caused to the petitioner, the fact remains that there is specific plea taken in the Written Statement in

para-5 that all the properties of the family have not been included therein. Therefore, the petitioner ought to have exercised due diligence and taken steps to enquire about the other properties of the petitioner's father also and amend the plaint before the trial commenced. But in the instant case, application for amendment was filed after D.W.1 was cross examined in part.

11. Therefore, there has been lack of diligence on the part of the petitioner. So she is not entitled to grant of relief of amendment of the plaint at the belated stage in view of proviso to Order VI Rule 17 CPC.

12. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference of this Court under Article 227 of the Constitution of India.

13. Accordingly, the Civil Revision Petition fails and is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-12-2018

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