

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.6601 of 2018

ORDER:

1) Assailing the order, dated 11.10.2018, passed in I.A.No. 385 of 2018 in O.S.No.189 of 2010 on the file of the Principal Junior Civil Judge, Tenali, wherein an application filed under Order VI Rule 17 and Section 151 of C.P.C. seeking amendment of plaint and plaint schedule by including item Nos.2 to 10 in the plaint schedule property was rejected, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The petitioners/plaintiffs filed the above suit seeking partition of the plaint schedule property. When the suit was posted for arguments, the petitioners filed an application seeking amendment of the plaint. The averments in the affidavit filed in support of the petition would show that in the cross-examination of PW.1, the defendants' counsel posed some questions relating to existence of some other properties apart from the plaint schedule property, as such the petitioners enquired about the same and found that there are some other properties belonging to their paternal grand

father, which are ancestral properties. After collecting all the necessary documents, they filed the present application.

3) Respondent No.5 filed counter denying the averments in the affidavit filed in support of the petition. It is stated that this respondent purchased the plaint schedule property in E.P.No.36 of 2008 on 10.03.2009 for an amount of Rs.4,62,500/- and subsequently filed the delivery petition. At that stage, the second defendant filed several petitions to drag on the matter and postponed delivery of the property. The plaintiffs are aware of all the properties at the time of filing of the suit, but they intentionally filed the present suit showing one property in the schedule which is subject matter in E.P.No.36 of 2008 and which was already auctioned. It is further stated that the trial in the suit is over and the matter is posted for arguments. Hence filing this application to amend the plaint nearly eight years after filing of the suit is un-warranted.

4) After considering the rival submissions made, the trial Court dismissed the petition. Challenging the same, the present Civil Revision Petition is filed.

5) Learned counsel for the petitioners/plaintiffs would submit that after the marriage, the petitioners settled at different places and they are not having knowledge about the

properties. It is said that they came to know about the said properties when they cross-examined PW.1 and after collecting all the necessary documents, filed the present petition. Having regard to the above, it is urged that there is no negligence on the part of the petitioners.

6) It is to be noted that the fourth defendant obtained a decree against the second defendant in O.S.No.4 of 1991 and filed E.P.No.310 of 2001 which was dismissed for default. Subsequently, the fourth defendant filed E.P.No.36 of 2008 for sale of the schedule property and accordingly an auction was conducted on 10.06.2009, in which the fifth defendant became the highest bidder for an amount of Rs.4,62,500/- and the same was confirmed on 11.02.2010. From the above, it is clear that the plaintiffs were aware about the said proceedings, but still they did not take any steps at the earliest point of time. Apart from that, it is also to be seen that the first defendant filed claim-petition in E.A.No.554 of 2004 and the same was dismissed, against which A.S.No.77 of 2006 was filed before the Senior Civil Judge's Court, Tenali. In the mean time E.P.No.310 of 2001 came to be rejected.

7) It is also to be noted that PW.1 was cross-examined on 03.02.2013 wherein she deposed that there are other properties, which are not shown in the suit schedule

property. Therefore, it is clear that the petitioners came to know about the existence of other properties by the time of cross-examination of PW.1 ie. in the month of March, 2013 itself. Further, defendants 2 and 3, who are the parents of the petitioners, filed their written statement reporting no objection to partition of the plaint schedule property. They have not mentioned about the other properties in the written statement. From the above it is clear that the petitioners were aware about the other properties even by March, 2013, but no effort was made to get the properties included in the plaint schedule till the case is posted for arguments. Apart from that no explanation is forthcoming as to the delay in filing the present petition at the time when the suit was posted for arguments. Having regard to the facts and circumstances of the case, I do not find any illegality or irregularity in the order passed by the trial Court.

8) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

16.11.2018

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