

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.6663 of 2018

ORDER:

This civil revision petition is taken up for hearing today.

This civil revision petition is filed questioning the order, dated 22.10.2018, passed in I.A.No.1026 of 2018 in O.S.No.15 of 2013, by the Judge, Family Court-cum-III Additional District Judge, Vizianagaram.

The suit O.S.No.15 of 2013 is a suit for partition. The matter is posted currently for oral arguments.

It appears that at a belated stage I.A.No.1026 of 2018 is filed for amendment of issues. The averments in the affidavit filed in support of the application make it clear that at the stage of submission of the arguments, the learned counsel for the defendants felt that more clear issues have to be framed, and therefore, an application under Order 14 Rule 5 CPC is filed for framing five additional issues. The said application was objected to and on merits the same was dismissed by the impugned order. Questioning the same, the present revision petition is filed.

This court has heard Sri Rayaprolu Srikanth, learned counsel for the petitioners and Sri G.Rama Gopal, learned counsel for the respondent.

Learned counsel for the petitioners in all fairness submitted that all the five issues that are proposed to be framed and which are mentioned in paragraph No.8 of the affidavit in I.A.No.1026 of 2018 are not really necessary and the crucial issue is whether the plaint schedule property covers all the ancestral properties of the plaintiffs and the defendant or not.

The learned counsel points out that in paragraph No.20 of the written statement that is filed a plea is already raised by the defendants that the plaintiff has suppressed the properties that he has got in a partition. Similarly, he also submits that in paragraph No.16 of the written statement a plea is raised that the plaintiff cannot lay any claim over the plaint schedule properties which were allotted to defendants Nos.1 and 2.

Therefore, it is his contention that there should be a specific issue on the point that is raised, more so, to the effect that whether a suit for partition for certain items only, i.e., a suit for partial partition will lie. The learned counsel also submits that there is no need for any further oral and documentary evidence, as the evidence already introduced before the court below is sufficient. His apprehension is that unless a specific issue raised he will not get any finding for the same.

On the other hand, the learned counsel for the respondent submits that the application is belated and new issues cannot be framed. He further submits that the application is filed only to drag on the matter.

This court, after hearing both the learned counsel, notices the clear statement by the learned counsel that no oral evidence whatsoever is proposed to be introduced and that the oral and documentary evidence that is introduced before the court below is enough for determining the matter. Hence, this court feels that framing issues to the following effect are necessary;

1. Whether the plaint schedule property covered all the ancestral properties of the plaintiff and the defendants?
2. Whether a suit for partial partition will lie?

As the suit is of the year 2013, the lower court is directed to proceed with the matter without granting any adjournments and without

permitting for any oral or documentary evidence to be introduced on the issues mentioned above.

The civil revision petition is accordingly allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 06.12.2018
Dsr

