

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.6940 of 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the orders dated 13.09.2017 in I.A.No.151 of 2009 in O.S.No.100 of 2001 on the file of the Court of Additional Senior Civil Judge, at Kovvur.

2. Heard the learned counsel for the petitioners. In spite of service of notice, the first respondent did not choose to appear and oppose the petition. Hence, this Court is inclined to dispose of the petition on merits in the absence of the first respondent.

3. A perusal of the record reveals that the first respondent herein had filed O.S.No.100 of 2001 on the file of the Additional Senior Civil Judge, at Kovvur against defendants 1 and 2 (petitioners herein) seeking partition of the plaint schedule property. During pendency of the suit, the first defendant died and defendants No.3 to 5 were brought on record as legal representatives of first defendant. During pendency of the suit, the first respondent filed I.A.No.258 of 2009 for amendment of plaint to include certain properties. The petitioner herein filed the petition under Order VI Rule 17 CPC seeking to amend the plaint to include certain properties. The trial Court dismissed both petitions. Hence, this revision.

4. The first respondent herein filed C.R.P.No.872 of 2018 challenging the orders dated 13.09.2017 in I.A.No.258 of 2009 in O.S.No.100 of 2001. This Court allowed the said CRP setting aside the orders in I.A.No.258 of 2009 and consequently allowed

I.A.No.258 of 2009. The first petitioner herein is the brother of respondents No.1, 4 and 5 and son of third respondent. All the parties belong to one family. This is a suit for partition. In a suit for partition, it is the duty of the plaintiff to include all joint family properties. For one reason or other, the plaintiff/the first respondent did not choose to include all properties.

5. It is the case of the petitioners that the first respondent did not include some of the joint family properties in the plaint schedule. The nature of the properties will be decided during the course of trial only. Even if the petition is allowed, the same may not cause any prejudice to the respondents. In one way, allowing of this petition is helpful to the first respondent also.

6. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the revision.

7. In the result, the Civil Revision Petition is allowed setting aside the orders dated 13.09.2017 in I.A.No.151 of 2009 in O.S.No.100 of 2001 and consequently I.A.151 of 2009 is allowed. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

12th June 2018

Rns