

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**CRP.No.7286 of 2017**

**ORDER :**

This Civil Revision Petition is filed challenging the order dt.18.07.2017 in I.A.No.572 of 2016 in O.S.No.32 of 2009 on the file of IV Additional District Judge, Tirupathi.

2. The petitioner herein is 5<sup>th</sup> defendant in the above suit.
3. The said suit was filed for partition of the plaint schedule properties and for allotment of 1/8<sup>th</sup> share to the plaintiff / 1<sup>st</sup> respondent herein.
4. Before the Trial commenced in the suit, the 1<sup>st</sup> respondent / plaintiff filed I.A.No.572 of 2016 seeking amendment of the plaint. One of the items in respect of which amendment was sought was addition of a particular item as item No.31 in the plaint schedule which are certain plots in the Industrial Development Authority, Phase-I, Jeedimetla, Hyderabad in Survey Nos.254, 255 and 256 of Jeedimetla Village.
5. In the affidavit filed in support of the said application, it was contended by the 1<sup>st</sup> respondent / plaintiff that due to inadvertence details of the properties were not correctly given earlier when the suit was filed and details of properties came to be known subsequently, and there was no negligence in filing the application to include certain properties as well as correcting the details of certain properties.

6. Counter-affidavit was filed by the 5<sup>th</sup> defendant / petitioner herein that item no.4 of the amended petition schedule is not joint family property, but it is company property belonging to a company by name 'Crystal Polymers and Additives Limited'.

7. However, the Court below did not go into the said aspect and allowed the application for amendment under the impugned order dt.18.07.2017. It held that addition of the properties would not in any way prejudice the case of the contesting defendants, that it would not alter the cause of action, and that it was within limitation.

8. Assailing the same, the present Civil Revision Petition is filed.

9. The counsel for petitioner contended that when petitioner herein had raised a contention that the item No.4, which is sought to be added as item no.31 in the plaint schedule, is the property of the company referred to above and not joint family property, as alleged by the 1<sup>st</sup> respondent / plaintiff, the Court below ought to have gone into the said issue and recorded at least tentative finding about the ownership of the property, and that it's failure to do so is an error of jurisdiction warranting interference by this Court under Article 227 of the Constitution of India.

10. I am unable to agree with the said contention for the reason that it is settled law that while considering an application seeking amendment of pleadings, the Court cannot go into the correctness of the case set up in the pleadings.

**11.** Therefore, the petitioner is not correct in stating that the Court below ought to have decided whether the item in question is joint family property or belonging to the company as per the petitioner's pleading. Once the plaint is amended, the petitioner would anyway get an opportunity to file an additional written statement and is entitled to take the pleadings therein that the item in question does not belong to the joint family, and is, therefore not liable for partition.

**12.** In case, he files such an additional written statement, the Court below is directed to frame an issue as to whether the item in question is joint family property or not, and decide the said issue along with the other issues which it has framed after giving opportunity to both parties to lead evidence therein.

**13.** With these observations, the Civil Revision Petition is dismissed. No order as to costs.

**14.** As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

**JUSTICE M.S.RAMACHANDRA RAO**

Date: 22.01.2018

Ndr/\*