

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6676 of 2017

ORDER:

Heard.

The present revision came to be filed by the petitioners/ defendants assailing the order dated 15.11.2017, passed in I.A.No.1189 of 2017 in O.S.No.138 of 2010, wherein the application filed by the petitioners to recall DW1 for his examination on additional issues, which were framed pursuant to the additional written statement filed in the month of September, 2017, was rejected.

The averments in the affidavit filed in support of the I.A. would show that the suit which has been filed by the plaintiff for partition was posted to 06.11.2017 for further evidence. Pending trial in the said suit, the first defendant died in the year 2015. Thereafter, I.A.No.794 of 2015 came to be filed to bring legal representatives of the first defendant on record and the said application was allowed on 20.06.2017. After the said application was allowed, the petitioners filed additional written statements on 18.09.2017, raising the following issue:

1.....

2. These defendants respectfully submit that suit of the plaintiff is bad for non-joinder and mis-joinder of proper and necessary parties, as the some of the legal heirs of deceased 1st defendant are not added as parties to the suit. It is respectfully submitted that the 1st defendant had four daughters viz. Kaduputla Booramma, Sarvasuddi Kondamma, Sarvasuddi Manikyam and Kilani Satyavathi and one son viz., Chinna. Of them Kondamma and Satyavathi predeceased their mother/1st defendant. Kondamma died leaving behind her only daughter by name Allu Padma w/ o.Chinna and whereas Satyavathi died leaving behind two daughters viz.,

Vuriti Anantha W/ o. Srinu and Yedula Baby W/ o. Ganesh and one son Kilani Sva S/o.Satyanarayana. Hence the heirs of Kondamma and Satyavathi (deceased daughters of 1st defendant) are proper and necessary parties for finality of litigation”.

Pursuant thereto, additional issues came to be framed on 12.10.2017. At that stage, the petitioners filed an application to recall DW1, to speak to the contents of the additional issue framed, which came to be rejected holding that the petitioners have already filed I.A.No.1118 of 2017 seeking issuance of summons to the witness, which was already dismissed by the Court and thereafter the present application came to be filed only to delay the proceedings.

Today, when the matter is taken up for hearing, learned counsels for both the parties state across the Bar that I.A.No.1118 of 2017 was filed seeking to summon the Commissioner, Peddapuram Municipal Corporation, for production of records. Therefore, the grounds on which the said application was rejected, namely that the petitioners have already filed I.A.No.1118 of 2017 for summoning the witness, cannot be accepted. It is to be noted that both the applications i.e., I.A.Nos.1189 of 2017 and 1118 of 2017 are different and the same cannot be made the basis to reject the other application. Having regard to the fact that the application to receive additional written statement, was allowed and an additional issue was also framed on 12.10.2017, it would be just and proper to give an opportunity to the petitioners to adduce further evidence by recalling DW1 so as to enable him to speak to the contents of the additional issue only.

In view of the above, the CRP is allowed setting aside the order impugned and permitting the petitioners to recall DW1 in O.S.No.138 of 2010 on the file of Senior Civil Judge, Peddapuram. It is needless to mention that the petitioners shall produce DW1, within a period of ten days from today, on which date, the counsel for the respondents shall also cross examine DW1, if they feel necessary. Both the parties agree that they shall not file an application summoning any witnesses for further clarification or lead any additional evidence.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed. There shall be no order as to costs.

19.01.2018
vnb



C. PRAVEEN KUMAR, J