

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. No. 330 of 2018

ORDER:

This Revision is filed assailing the order dt.12.12.2017 in I.A.No.396 of 2017 in O.S.No.1 of 2005 of the Senior Civil Judge, Narayanpet.

2. Petitioner is 2nd plaintiff in the above suit.
3. Petitioner along with 1st plaintiff filed the said suit for partition of the plaint schedule properties and for separate possession of 1/18th share therein. The suit was filed on 17.01.2005.
4. Written statement was filed by the respondents opposing the suit claim.
5. Thereafter, issues were framed, trial commenced and the matter was at the stage of cross-examination of DW9.
6. At that stage, petitioner filed I.A.No.396 of 2017 stating that while verifying the survey numbers which were mentioned in suit schedule, five survey numbers and their extents were found to have not been mentioned therein; that the petitioner gave information to the counsel about this fact; and that this occurred because of inadvertent mistake while typing the schedule of the property and plaint requires to be

amended for including those properties. It was stated that non-mention of the said properties was only a typographical mistake which crept in at the time of typing; and due to lapse of time the mistake could not be detected and it is now sought to be rectified by filing an application seeking amendment of the schedule for incorporation of the said land also in the suit schedule.

7. Counter affidavit was filed by respondents 3, 48, 49 & 50 opposing the said application and denying the contentions of the petitioner that there was only an inadvertent mistake while typing the properties in the schedule to the suit. It was contended that 12 years after filing of the suit, this application for amendment has been filed and the application therefore deserves to be dismissed, particularly, when it was filed after the trial commenced.

8. By order dt.12.12.2017, the Court below dismissed the said application. It observed that the suit was filed in 2005, that it was coming up for cross-examination of DW9 when this I.A. was filed; that as per proviso to Order VI Rule 17 CPC, petitioner is expected to establish that after due diligence, petitioner could not seek amendment before trial commenced, but the petitioner failed to establish due diligence. It also observed that petitioner claimed that

Exs.A1 and A2 establish that the proposed properties are also joint family properties, but those documents which are pahanies, do not mention these survey numbers.

9. Assailing the same, this Revision is filed.

10. Though counsel for petitioner sought to contend that the Court below ought to have allowed the application for amendment and included the properties also in the plaint schedule, and that omission to mention in plaint occurred only because of an inadvertent mistake/typographical error, since the petitioner and the other plaintiffs are expected to read the plaint before signing the same and filing it in the Court, there is clear absence of due diligence on their part.

11. Also, since the I.A. seeking amendment was filed 12 years after the suit was filed and after trial commenced, the proviso to Order VI Rule 17 CPC does not permit allowing of the amendment sought by the petitioner. Therefore the Court below did not commit any error of jurisdiction in refusing to permit the amendment to the plaint.

12. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

13. Accordingly, this Civil Revision Petition is dismissed.

No order as to costs.

14. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

26th March, 2019.

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