

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.435 of 2018

ORDER:

Heard the learned counsel for petitioners.

2. This Revision Petition is filed assailing the order 12-12-2017 in I.A.No.24 of 2017 in O.S.No.160 of 2009 of the Junior Civil Judge, Wanaparthi.

3. Petitioners herein are the defendant Nos.1, 2 and 9 to 12.

4. The 1st respondent/plaintiff filed the said suit for partition of the plaint schedule properties seeking 1/24th share in the plaint schedule properties.

5. Written Statement was filed by the petitioners opposing the suit claim and along with the Written Statement, several documents were also filed by the petitioners stating that they are their self acquired properties.

6. Alleging that the properties mentioned by the petitioners are also joint family properties and not self acquired properties of the petitioners, the 1st respondent filed I.A.No.24 of 2016 to amend plaint including those properties also. He stated that he did not have knowledge about the existence of the properties at the time of filing of the suit.

7. Counter affidavit was filed in the said application by the petitioners denying that the 1st respondent did not have any knowledge about these properties. They also asserted that they are not ancestral properties but they are self acquired properties.

8. By order 12-12-2017, the Court below allowed the application for amendment and permitted the 1st respondent/plaintiff to include the properties mentioned by him in the amendment application also in the plaint schedule. It held that the question whether the properties now sought to be added in the plaint schedule are joint family properties or ancestral properties can only be decided after those properties are added to the plaint schedule and after the evidence is adduced by both parties in that regard and that the burden is on the 1st respondent to prove that those properties were joint family properties.

9. Assailing the same, this Revision Petition is filed by the petitioners.

10. Though the learned counsel for the petitioners sought to contend that the Court below ought not to have allowed the application for amendment filed eight years after filing the suit in 2009 and grave prejudice would be caused to the petitioners, since admittedly trial in the suit has not yet commenced by the time the application for amendment was filed by the 1st respondent, no serious prejudice is caused to the petitioners since they would have the opportunity to file

an amended Written Statement refuting the claims of the 1st respondent, if they so desire.

11. As regards the contention of the learned counsel for the petitioners that the Court below should have considered the original registered sale deeds filed by the petitioners and taken a view that the properties now sought to be added are self acquired properties, I agree with the view of the trial Court that unless these properties are added to the plaint schedule and unless and until evidence is adduced by both the parties, it cannot be decided which of the properties are joint family properties and which are self acquired properties of D-1 and D-2 and late Balaswamy.

12. I therefore 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. Civil Revision Petition fails and is accordingly dismissed. Since the suit is of the year 2009, the Court below shall expeditiously decide the suit. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 26-02-2019

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