

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. Nos.659, 661 and 692 of 2019

COMMON ORDER:

These three Revisions arise out of the same suit between the same parties and therefore, they are being disposed of by this common order.

CRP.Nos.661 and 692 of 2019:

2. The suit O.S.No.137 of 2007 was filed by the husband of the 1st petitioner, who is the father of the respondents 2 and 3, against the respondents herein for declaration of title to the suit schedule property and recovery of possession apart from cancellation of Document No.860 of 2007 dt.23.01.2007 and for future mesne profits.
3. Counter Claim was filed by the respondents on 07.11.2007.
4. The plaintiff did not file any written statement to the said Counter Claim during his life time and he passed away on 03.07.2017.
5. Thereafter, the petitioners were brought on record as his legal representatives.
6. After the trial is concluded and the matter was posted for arguments, the petitioners herein filed I.A. No.453 of 2018, to reopen the case, I.A. No.454 of 2018, under Order VIII Rule 9 CPC to permit the petitioners to file a reply to the Counter Claim, and I.A. No.408 of 2018, to implead the brothers of the deceased plaintiff on record.
7. In the affidavit filed in support of I.A.Nos.453 and 454 of 2018 it is contended that the petitioners are ready to file written statement to the Counter Claim of the defendants and that the docket of the trial Court

showed that no step, permitting the petitioners or the deceased plaintiff, to file reply to the Counter Claim was followed, probably by a mistake; and because of the mistake by the Court, the deceased plaintiff and the petitioners could not file written statement to the Counter Claim.

8. Counter affidavit was filed opposing I.A.Nos.453 and 545 of 2018 pointing out that a copy of the written statement with Counter Claim was furnished to the counsel to the deceased plaintiff and he received a copy of it and also made an endorsement on the docket sheet of the written statement, the Court also framed an issue on the claim made by the respondents in the Counter Claim; those issues were read over to both the parties; trial was conducted; and after hearing of the arguments in suit, these applications have been filed. It is also pointed out that the petitioners had opportunity to file written statement to the Counter Claim and they had in fact cross-examined the witnesses on the Counter Claim too and after more than ten years of filing of the written statement and Counter Claim, these applications cannot be ordered.

9. By common order dt.27.07.2018, the Court below dismissed I.A. Nos.453 and 454 of 2018.

10. It held that on 07.11.2017 the respondents had filed Counter Claim in their written statement and on 30.11.2007 the Court below had accepted the Court fee and after hearing both the sides and recording “no settlement” terms, framed issues. It observed that merely because it did not post the matter for steps for filing reply to the Counter Claim specifically, it did post the matter for check and put up Counter Claim on 30.11.2007, and after hearing both the sides it framed issues on the same day. It observed that if

the petitioners intended to file a rejoinder to the Counter Claim they would have pleaded the same at that time. After completion of evidence, filing written arguments and after laps of 11 years, petitioners cannot be now permitted to file reply to the Counter Claim. It also held that the petitioners were negligent and they are not entitled to any consideration and dismissed I.A. Nos.453 and 454 of 2018.

11. Assailing the same, these Revisions are filed.

12. Counsel for the petitioners contended that since the Counter Claim was mentioned in the written statement it was not noticed by the deceased plaintiff as well as his counsel and therefore opportunity be given to the petitioners to file a written statement to the Counter Claim. He also pointed out that it was a mistake of the Court in not posting the matter for filing of the reply to the Counter Claim, and the petitioners cannot be allowed to be prejudiced by such mistake.

13. It is not in dispute that the written statement was filed on 07.11.2007 containing the Counter Claim. It was the duty of the deceased plaintiff as well as his counsel to read the same and then decide on their course of action before the framing of the issues. Admittedly, an issue relating to the Counter Claim was also framed and it is not disputed by the counsel for the petitioners. It was the duty of the original plaintiff and his counsel to request the Court and point out to the Court that they have a right to file a reply to the Counter Claim and seek time for the said purpose, if the Court had not posted the matter for such a step.

14. At this point of time, when the entire trial is concluded and arguments are heard, petitioners cannot be granted opportunity to file a

reply to the Counter Claim by reopening the suit. There has been negligence on the part of the original plaintiff and therefore, they are not entitled to any indulgence by this Court. I therefore do not find any error of jurisdiction in the order passed by the Court below in I.A. Nos.453 and 454 of 2018. Accordingly, CRP. Nos.661 and 692 of 2019 are dismissed.

CRP. No.659 of 2019:

15. In this Revision, petitioners questioned the order dt.27.07.2018 passed in I.A. No.408 of 2018 in O.S. No.137 of 2007 seeking to implead the brothers of the deceased plaintiff as parties to the suit.

16. According to the petitioners, proposed parties are necessary parties and there was an alleged oral division of land between the deceased plaintiff and his brothers.

17. The respondents objected to the same by pointing that there is no whisper of the brothers' partition in the plaint and those persons were not necessary parties and in any event they cannot be impleaded 11 years after the suit was filed.

18. The Court below held that the proposed parties were not shown to have any interest in the suit schedule property and they are also not persons in whose absence the suit cannot be decided or no effective decree can be passed.

19. The counsel for the petitioners contended that the brothers of the deceased plaintiff are necessary parties to the suit.

20. In the absence of any basis for their impleadment, merely because they are related to the deceased plaintiff, they cannot be brought on record. In fact, deceased plaintiff has never mentioned that his brothers had any interest in the suit schedule property. Therefore, the order passed by the Court below, refusing the relief sought for in I.A. No.408 of 2018, cannot be found fault with.

21. Accordingly, CRP. No.659 of 2019 is also dismissed.

22. In the result, all the three Revisions are dismissed. There shall be no order as to costs.

23. As a sequel, miscellaneous applications, if any pending, shall be closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04.06.2019
LSK

