

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.586 of 2019

ORDER :

This Civil Revision Petition is filed, under Article 227 of the Constitution of India, challenging the order dated 12.02.2019 in I.A.No.1166 of 2018 in O.S.No.954 of 2012 passed by the VIII Additional District Judge, Ranga Reddy District at L.B. Nagar.

The petitioner herein is the plaintiff in the suit O.S.No.954 of 2012, which was filed for partition and separate possession of Plaint – A and B schedule properties and for allotment of a share therein to him.

Written Statement was filed by defendant No.10/respondent No.1 contending that there was already a prior partition long back and that, therefore, there is no joint family nor there is any joint possession. It was alleged that there was a panchayat and mediation held on 28.04.2009 among the parties before the family elders and common relatives and there was a family settlement and partition of B-schedule property. There was a sketch also prepared dividing and partitioning the shares among the parties.

Before commencement of trial, respondent Nos.1 to 5/defendant Nos.10 to 14 have filed I.A.No.1166 of 2018 in O.S.No.954 of 2012 seeking amendment of the written statement, contending that respondent No.1 and his wife were

the permanent residents of United States of America and their children are also settled there; and taking advantage of the same, the petitioner/plaintiff in collusion with the other defendants changed the entire boundaries of B-schedule property; and he came to know about the same when he visited B-schedule property on 02.10.2018 and was unable to localize his land as per the sketch prepared in the presence of elders. He, therefore, sought insertion of Para 6-A in the written statement and deletion of the words “to dismiss the above suit” and substitute it by the words “partly decree the suit in respect of B-schedule property”.

This application was opposed by the petitioner/plaintiff contending that under garb of amendment, respondent Nos.1 to 5/defendant Nos.10 to 14 wish to withdraw the material contents of earlier written statement by introducing altogether a new case, which cannot be permitted. The petitioner/plaintiff denied that taking advantage of the absence of respondent Nos.1 to 5/defendant Nos.10 to 14, he in collusion with the other defendants changed the boundaries of the B-schedule property. It is contended that having stated in the written statement that partition was already affected and was acted upon, it is not open for respondent Nos.1 to 5/defendant Nos.10 to 14 now to contend that partition be made.

By order dated 12.02.2019, the Court below allowed the said application. After considering the contentions of the

parties, it noted that the trial in the case had not yet commenced; that respondent Nos.1 to 5/defendant Nos.10 to 14 have shown sufficient grounds that there is a necessity to permit them to amend the written statement by explaining the earlier admissions.

Assailing the same, this revision is filed.

Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the petitioner/plaintiff contended that respondent Nos.1 to 5/defendant Nos.10 to 14 cannot be permitted to amend the written statement filed by them, because, having stated in their earlier written statement that there was already a partition and to dismiss the suit, now respondent Nos.1 to 5/defendant Nos.10 to 14 again want partition. According to the learned Senior Counsel, it would amount to taking away the admissions contained in the original written statement filed by respondent Nos.1 to 5/defendant Nos.10 to 14, which cannot be countenanced.

Sri K. Janardhan Reddy, learned counsel for respondent Nos.1 to 5/defendant Nos.10 to 14 refuted the said contentions and supported the impugned order passed by the Court below.

I have noted the contentions of both sides.

No doubt, the petitioner/plaintiff had filed a suit for partition and respondent Nos.1 to 5/defendant Nos.10 to 14 have taken a plea in their earlier written statement that there

was a prior partition and the suit of the plaintiff is to be dismissed.

In the application for amendment of written statement, they, however, pleaded that since respondent No.1 was a resident of USA along with respondent Nos.2 to 5, who are his wife and children, taking advantage of their absence, the petitioner/plaintiff, in collusion with the other defendants, had changed the entire boundaries of B-schedule property, which had earlier been partitioned, thereby rendering it difficult for respondent Nos.1 to 5/defendant Nos.10 to 14 to localize their land as per the sketch prepared in the presence of elders at the time of settlement/partition, which allegedly took place on 28.04.2009; and this was discovered when respondent No.1 visited plaintiff B-schedule property on 02.10.2018, making it necessary to seek amendment in the written statement altering the original plea and also seeking partition.

No doubt, the petitioner/plaintiff had denied the said contentions. But, it is settled law that while deciding whether or not to permit amendment of pleadings, the correctness of such pleadings cannot be gone into.

Also, it is the contention of respondent Nos.1 to 5/defendant Nos.10 to 14 that pending the suit, there has been a change in the circumstances allegedly caused by the conduct of the petitioner/plaintiff, thereby prompting them to

seek amendment of the written statement and forcing them also to seek partition, since, according to them, allegedly the boundaries of B-schedule property, which was earlier partitioned, were changed by the petitioner/plaintiff. When such subsequent events are alleged to have occurred, a party cannot be denied an opportunity to amend the pleadings, because it is not as if the Court is accepting the correctness of the said pleading, which, any way, will have to be decided during the course of trial.

In any event, since the trial of the suit has not yet commenced, proviso to Order 6 Rule 17 of C.P.C. does not apply and no prejudice would also be caused to the petitioner/plaintiff, since he would have an opportunity to amend his plaint or file a rejoinder.

I, therefore, do not find any error of jurisdiction in the impugned order dated 12.02.2019 passed by the Court below warranting interference by this Court, under Article 227 of the Constitution of India.

The Civil Revision Petition fails and it is accordingly dismissed. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

13.03.2019.
Msr

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.586 of 2019



13.03.2019
Msr