

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.668 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.21.01.2019 passed in I.A.No.1697 of 2018 in O.S.No.774 of 2014 by the IX Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioner herein is the 2nd defendant in the said suit.
3. Respondents 1 and 2 filed the said suit for partition of the plaint schedule property for metes and bounds and to allot 1/4th share each to them as well as to the petitioner and the 3rd respondent.
4. In the plaint it is the contention of the respondents 1 and 2 that the suit schedule property is a self acquired property of K.Nagaraj, who is the father of the petitioner and the respondents, and on his death on 21.02.2006 they are entitled to a share in the suit schedule properties.
5. In the written statement filed by the 2nd defendant it is the plea of the petitioner that there was a Will executed by late K.Nagaraj in favour of the 1st defendant on 13.05.2003, that the petitioner is in possession of the Item No.3 of the plaint schedule in compliance with the wish of their father, that the 3rd respondent is in possession of Item No.2 of the plaint schedule property and in Item No.1, the petitioner's daughter is entitled to 1/2 share and the respondents are entitled to 1/8th share.
6. It is also the contention that the respondents 1 and 2 were aware of the said Will. But in para 2 of the written statement while admitting that the

petitioners and the respondents are the children of late K.Nagaraj, it is stated that he died *intestate* on 21.02.2006.

7. After issues were framed and affidavit in lieu of the Chief Examination of P.W.1 was filed, but before the cross-examination of P.W.1 started, petitioner filed I.A. No.1697 of 2015 seeking amendment of the written statement for deleting the word *intestate* appearing in the 3rd line in para 2 of his written statement. He stated that this amendment would not create any new case and no prejudice would be caused to respondents 1 and 2 since there are no material changes.

8. This application was opposed by the respondents 1 and 2 who contended that petitioner had earlier filed I.A.No.1286 of 2015 to implead his daughter as 3rd defendant in the suit by virtue of the Will allegedly executed by late K.Nagaraj, that the said I.A. was dismissed on 30.08.2016, which was confirmed in CRP.No.5299 of 2016; that late K.Nagaraj did not execute any Will as is alleged by the petitioner; and the word “*intestate*” in the 2nd para of the written statement of the petitioner was not an accidental slip.

9. By order dt.21.01.2019, the Court below dismissed the said application. It held that the Will set up by the petitioner in his written statement was disputed by the respondents 1 and 2 and I.A. No.1286 of 2015 filed by him to implead his daughter as 3rd defendant in the suit had been dismissed; and the petitioner, by seeking amendment of his written statement, is now trying to bring this pleading in the main suit. It also observed that the matter is coming up for cross-examination of P.W.1 before the Advocate Commissioner, and so the trial having commenced, the application for amendment cannot be permitted. It also relied on the

decision of the Supreme Court in **Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria**¹.

10. Assailing the same, this Revision is filed.

11. Counsel for the petitioner contended that there is already a pleading about the Will of late K.Nagaraj in para 4 of written statement filed by him in the suit and therefore, the use of word *intestate* in para 2, when referring to the death of late K.Nagaraj, is an obvious mistake and the same has to be permitted to be corrected by way of amendment of his written statement. He also contended that cross-examination of P.W.1 had not started when the application I.A.No.1697 of 2018 was filed seeking amendment of the written statement and the Court below erred in holding that the trial is commenced.

12. Counsel for the respondents 1 and 2 refuted the said contentions and supported the order passed by the Court below.

13. A reading of the written statement filed by the petitioner clearly shows that in para 4, he had mentioned about the Will dt.13.05.2013 executed by late K.Nagaraj in relation to the properties, which are subject matter of the suit. Merely because the respondents 1 and 2 dispute the execution of the Will and merely because petitioner's attempt to implead his daughter as 3rd defendant in the suit was not successful, that cannot be a reason for refusing to permit the petitioner to amend the written statement. This is because when he propounded the will executed by late K.Nagaraj obviously the use of the word *intestate* in para 2 of his written statement was a mistake made by inadvertence.

¹ CDA 2015 SC 745 = 2015(10) SCC 203

14. The Court below also is not correct in stating that the trial commenced when the application I.A. No.1697 of 2018 was filed because cross-examination of P.W.1 had not yet commenced by that date.

15. The decision in **Ram Niranjana Kajaria** (1 supra) cited by the respondents 1 and 2 in the Court below also cannot come to the assistance of the respondents 1 and 2 because the principle laid down in that case was that an admission made in pleadings cannot be permitted to be withdrawn by amendment. When there is a mention about the Will in para 4 of the written statement of the petitioner, the use of the word *intestate* is an obvious mistake. Therefore, it cannot be treated as an admission by the petitioner that late K.Nagaraj did not execute any will.

16. For all these reasons, impugned order is set aside; I.A. No.1697 of 2018 in O.S. No.774 of 2014 of the IX Additional Chief Judge, City Civil Court, Hyderabad is allowed; and consequently, this Revision is also allowed. There shall be no order as to costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 02.07.2019
LSK

