

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

C.R.P. No.1076 of 2016

O R D E R:

This Revision is filed assailing the order dated 21.11.2015 in I.A.No.84 of 2015 in O.S.No.117 of 2006 of the Special Judge for Trial of Offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad.

2. Petitioner is the 6th plaintiff in the suit. The suit was filed for partition of the plaint A schedule property and for allotment of 7/10th share to the plaintiffs; for partition of B schedule property and allotment of 7/8th share to the plaintiffs; to declare the judgment and decree dated 12.12.1980 in O.S.No.252 of 1980 as null and void and not binding on the plaintiffs; and for costs.

3. While so, the defendants 17 to 21 filed I.A.No.84 of 2015 under Order 1 Rule 8 CPC to transpose them as plaintiffs 14 to 18 in the suit alleging that they are the legal representatives of the 9th defendant who died on 10.01.2009.

4. In the said application, they contended that as per the recitals in the plaint, defendant Nos.9 and 10 are entitled for 1/10th share in A schedule property and though it is contended in the plaint that defendant No.9 is not having any share in B schedule property, petitioners are disputing the same. It is contended that in another suit O.S.No.252 of

1980, all other defendants except defendants 17 to 21 had become ex-parte other than the 9th defendant and a compromise had been entered into before Lok Adalat on 05.07.2011 in the said O.S.No.252 of 1980 out of which CCCA.No.47/1981 and LPA.No.378/1989 arose; and there is every possibility of the plaintiffs herein entering into such collusive compromise in the instant suit also defeating the right of the legal representatives of the 9th defendant and therefore there should be transposed as plaintiffs 14 to 18.

5. Counter affidavit was filed opposing the said transposition by respondents 8 to 11, respondents 13 to 17. They contended that 9th defendant and her legal representatives and respondents 1 to 5 had not been diligent in pursuing the cases, that the matter is subjudice before the Court, that the 9th defendant or the respondents 1 to 5 are not transposed in O.S.No.252 of 1980 or in the subsequent proceedings and they had also challenged the award before the Lok Adalath; that their apprehension is totally baseless and transposition ought not be done.

6. By order dated 21.11.2015, the Court below allowed the said application by taking note of the fact that the suit is for partition and that in such a suit, all parties are claimants and respondents 1 to 5 who are the legal representatives of deceased defendant No.9 who is also one of the share holder can also be treated as plaintiff.

7. It also observed that apprehension of the respondents 1 to 5/D17 to D21 is that if there is a compromise behind their back, it would cause them great prejudice and the fact that there is a settlement before the Lok Adalath on 05.07.2011 in LPA.No.378/1989 behind the back of the 9th defendant shows that the apprehension of respondents 1 to 5 is reasonable.

8. Assailing the same, this Revision is filed.

9. Counsel for the petitioner contends that the Court below ought not to have transposed the respondents 1 to 5 as plaintiffs in the suit and that this is contrary to law.

10. Counsel for the respondents relied upon the decisions reported in **S.Sudhakar and Ors. Vs. Syed Kareem and Ors¹**, **Vuppala Ramulu and Anr vs.V.Bhudevi and Ors²** and **P.S.Mohan Sha and Ors vs. P.S.Parameswaran Sham and Ors³**.

11. This Court in **S.Sudhakar's** case (1 supra) held that in a suit for partition, the position of plaintiffs and defendants is interchangeable and in a partition suit, a party can claim transposition from the category of defendant to the category of plaintiff and vice versa and transposition is not prohibited. Reliance was placed on the judgment of the Supreme Court in

¹ 2017 (2) ALD 1

² 2008 (4) ALD 363

³ 2009 4 LW383

Bhagwan Swaroop v. Mool Chand⁴. It also held that in a suit for partition, the position of plaintiffs and defendants can be interchangeable and that a partition suit is a proceeding where such transposition is possible.

12. The power of transposition was provided under Order 1 Rule 10 CPC.

13. Having regard to the apprehension expressed by the respondents 1 to 5/D17 to D21, the Court below did not commit any error of jurisdiction in permitting their transposition as plaintiffs in the suit and no prejudice has been caused to the petitioner by such transposition.

14. Therefore, I do not find any merit in the Civil Revision Petition and is dismissed. No costs.

15. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

15.02.2019

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⁴ (1983) 2 SCC 132