

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.4736 of 2015

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.01.09.2015 in I.A.No.272 of 2015 in O.S.No.25 of 2011 of the Judge, Family Court-cum-IV Additional District and Sessions Judge, Adilabad.

2. The petitioner herein is plaintiff in the suit. She filed the said suit for partition and separate possession of the plaint schedule properties against her sister and others. It is her contention in the suit that the plaint schedule properties are ancestral properties of her father Bhojanna and she and the 1st respondent, who is her sister, succeeded to the said properties jointly.

3. The 1st respondent filed the written statement opposing the suit claim.

4. Thereafter, trial concluded and the matter was posted for arguments.

5. At that stage, the petitioner filed I.A.No.272 of 2015 to re-open the suit, which was posted for arguments, for amending the suit to include the property hitherto not mentioned in the plaint schedule, i.e., land of an extent of Ac.1.03 gts. in Sy.No.3/2/1 of Battisavargaon Village of Adilabad Mandal. She alleged that she had no knowledge that this property also belongs to their father, as the 1st respondent, being her elder sister, used to look after the said property and she used

to reside at a different place ever since her marriage, which had occurred during her childhood, and so, she could not mention the above said property in the suit schedule properties.

6. Counter-affidavit was filed by the 1st respondent to this application, denying that the said property is not ancestral property. It is also contended that when the main case is posted for arguments, this application is filed for re-opening the case, cannot be taken up.

7. By order dt.01.09.2015 I.A.No.272 of 2015 filed by the petitioner to re-open the suit was dismissed and the application filed for amending the plaint was not even numbered.

8. Assailing the same, this revision is filed.

9. Counsel for the petitioner contends that the marriage was performed during her childhood and she was living in a different village and did not know about this item of the property, opportunity should have been given to her for amending the pleadings by re-opening the suit and permitting her to adduce evidence in that regard.

10. Counsel for the 1st respondent, however, denied the said allegations and contended that the new item of property is not ancestral property and it is self acquired property of the father of the parties.

11. Normally, applications for re-opening the suit, which is at the stage of arguments, are not entertained. But, in the instant case, the fact that the petitioner got married during her childhood and living at a different village, is not disputed. Therefore, the possibility of the

petitioner knowing about this item of property was remote, because if she knew about it, she would have mentioned it in the plaint.

12. The question whether it is ancestral property or self acquired property of the father of the parties is a matter to be gone into the suit, and it cannot be gone into while considering the application whether the suit is to be re-opened or not.

13. So, the view of the Court below that the inclusion of the said property is not necessary, accepting the plea of the 1st respondent that it is not the property of the father of the parties, cannot be sustained.

14. The petitioner cannot be expected to lead evidence while making application for re-opening of the suit on the question whether the property, sought to be included in the plaint by way of amendment, is ancestral property.

13. Therefore, this Civil Revision Petition is allowed; order dt.01.09.2015 in I.A.No.272 of 2015 of the Judge, Family Court-cum-IV Additional District and Sessions Judge, Adilabad, is set aside; and I.A.No.272 of 2015 is allowed. The Court below is directed to number the application seeking amendment of the plaint and then pass appropriate orders therein, while permitting the respondents to file amended pleadings. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

19th August 2019

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