

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

CIVIL REVISION PETITION No. 3032 of 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 21.02.2018 in I.A.No.140 of 2018 in O.S.No.24 of 2005 of the IX Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioners herein are plaintiffs 1, 3 and 4 in the suit.

3. Respondents 1 to 35 are the defendants and respondent No.36 is plaintiff No.2.

4. The plaintiffs filed the said suit against the respondents/defendants for partition of plaint 'A' to 'F' schedule properties and for separate share therein.

5. The respondents/defendants opposed the suit claim.

6. When the matter was at the stage of cross examination of D.W.4, the plaintiffs filed I.A.No.140 of 2018 seeking amendment of the plaint i.e., to correct the description of defendants 21, 25 and 26; to include the lands admeasuring 252 acres and 384 acres in Survey Nos.20 and 28 of Miyapur Village, Serilingampally Mandal, Ranga Reddy District; and to include the house property bearing No.4-3-42 (Old No.3-51)

in an area of Ac.8.09 guntas situated at Ananthagiri Hills, Vikarabad.

7. In the affidavit filed in support of the application, the petitioners stated that they inadvertently mentioned incomplete address of defendants 21, 25 and 26; that by oversight, they did not include the landed property of 252 acres and 384 acres and that they were unaware of the availability of the house bearing No.4-3-42. According to the petitioners, they came to know about the house property recently and the said property is also joint family property purchased with the joint family nucleus and grave prejudice would be caused, if those properties are not partitioned.

8. Counter affidavit was filed by respondents 1 and 11 opposing the amendment of the plaint taking the plea that the properties are self acquired properties of the first respondent.

9. By the impugned order dated 21.02.2018, the Court below dismissed the said application observing that since the matter is at the stage of cross examination of D.W.4, the amendment sought for cannot be allowed at that stage. The Court below also referred to the evidence of the first plaintiff and quoted a portion of the said evidence in the impugned order.

10. Assailing the same, this Revision is filed.

11. Learned counsel for the petitioners contended that the petitioners would be gravely prejudiced if the application for amendment of the plaint is not allowed and that amendment of the plaint would avoid multiplicity of proceedings and no prejudice would be caused to the respondents. So he prayed that impugned order be set aside and the Revision be allowed.

12. Learned counsel for respondents 1 to 9 opposed the said prayer and supported the impugned order. He contended that the petitioners knew about the properties which are now sought to be included long back since arbitration awards had been passed by two retired Supreme Court Judges in respect of those properties and that since the trial has commenced, and there is no due diligence on part of petitioners, the application for amendment cannot be allowed.

13. Insofar as the request of the petitioners to give complete description of defendants 21, 25 and 26 is concerned, these persons being already on record, and their complete address was not furnished earlier, disposal of the suit might be delayed because of the same.

14. The learned counsel for the respondents also did not seriously oppose the amendment insofar as permitting amendment as regards the complete description of defendants 21, 25 and 26 is concerned. So I am of the opinion that the impugned order deserves to be set aside to that extent.

15. Insofar as inclusion of the new properties in the plaint schedule is concerned, admittedly, the trial has commenced and the petitioners have not established that in spite of due diligence they could not seek amendment of the plaint for inclusion of these properties prior to the commencement of trial. So under proviso to Order VI Rule 17 C.P.C, there is a bar to permit such amendment. Therefore, the Court below was justified in refusing the prayer of the petitioners to amend the plaint and include the properties now sought to be included.

16. Accordingly, this Civil Revision Petition is partly allowed and the order dt 21.02.2018 in I.A.No.140 of 2018 in O.S.No.24 of 2005 of the IX Additional Chief Judge, City Civil Court, Hyderabad, to the extent of denying permission to the petitioners to correct the description of defendants 21, 25 and 26, is set aside and I.A.No.140 of 2018 is allowed to that extent; but the impugned order to the extent the Court below refused to permit inclusion of new properties in the plaint schedule, is sustained. No order as to costs.

As a sequel, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02.04.2019
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