

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

CIVIL REVISION PETITION NO.2159 OF 2016

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt. 18.03.2016 in I.A.No.176 of 2016 in O.S.No.113 of 2007 on the file of the Judge, Family Court-cum-VII Additional District & Sessions Judge, Medak at Sangareddy.

Petitioner is plaintiff in the suit. She filed the said suit for partition of the plaint schedule properties and for 1/8th share in schedule A to C properties and for other reliefs.

The 4th defendant/first respondent herein filed written statement stating that there was an oral partition of joint family properties prior to 1982. He also filed an affidavit-in-lieu of chief examination on 30.01.2013 pleading in para-7 thereof that there was an oral partition of joint family properties prior to 1982.

On 22.02.2016 he, however, filed I.A.No.176 of 2016 under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC), to amend the written statement for inserting the word “written” by deleting the word “oral” before the word ‘partition’ in para-8 of the written statement.

In the affidavit filed in support of the said application, it is the contention of the fourth defendant/first respondent that though he had pleaded in para-8 of the written statement that there was an ‘oral’ partition of the joint family properties prior to 1982, there was in fact a partition which occurred in 1980, which was reduced into writing,

and was got impounded with required stamp duty under ROR proceedings by Revenue authorities. According to him, his father also gave a statement in such proceedings for implementation of the said partition deed. He contended that he had no opportunity to see the document and due to lapse of time and oversight he had pleaded 'oral' partition. He further contended that defendants 2 and 3 have specifically pleaded that there was a partition reduced into writing and therefore, the application for amendment should be allowed.

Counter affidavit was filed by the petitioner opposing the said application stating that there is a pleading in the written statement in para-8 about oral partition which was reiterated by making suggestions to P.W.1 in her cross-examination about the 'oral', partition and nine years after filing written statement, and five years after commencement of trial, amendment cannot be permitted.

By order dt. 18.03.2016, the Court below allowed the said application. Though it noted that the petitioner had pleaded absence of diligence on the part of the first respondent in seeking amendment, it observed that only plaintiffs have certain limitations in seeking amendments and they cannot introduce a new case or change the nature of the case or cause of action, but defendants are in a privileged position and they can be permitted to amend the pleading. If really a genuine question of fact is omitted to be pleaded while filing written statement, amendment can be permitted. It observed that the question of partition remains undisturbed and by only seeking insertion of a word "written" in the place of "oral" partition, no prejudice is caused.

Assailing the same, this Revision is filed.

From the facts narrated above, it is clear that trial in the suit had commenced long back and under proviso to Order VI Rule 17 CPC, amendments are not to be permitted unless the party seeking amendment establishes that in spite of due diligence he could not seek amendment before the trial commenced. Except suggesting lapse of memory, nothing else is mentioned in I.A.No.176 of 2016 by the first respondent as to why he could not have sought for amendment before the trial commenced.

Also if the plea of 'oral' partition raised by the first respondent in the written statement is permitted to be substituted by a 'written' partition, by way of amendment, it would amount to withdrawal of an admission by a party, which also cannot be permitted. The Court below has ignored these two principles and allowed the application.

Therefore, this Revision is allowed; order dt. 18.03.2016 in I.A.No.176 of 2016 in O.S.No.113 of 2007 on the file of the Judge, Family Court-cum-VII Additional District & Sessions Judge, Medak at Sangareddy, is set aside and the said I.A. is dismissed.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

(M.S.RAMACHANDRA RAO, J)

6th August 2019
RRB