

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

CRP.No.s 4674 and 4680 of 2018

COMMON ORDER:

These two Revisions arise out of the same suit and so, they are being disposed of by this common order.

2. Heard counsel for the petitioner. Notice has been sent in both the Revisions to the respondents therein.

3. In CRP.No.4674 of 2018, respondents 1, 2, 5 to 8 were served and for the 4th respondent, Sri Alluru Raghurama Aurava entered appearance and 3rd respondent is shown to have died.

4. In CRP.No.4680 of 2018, Sri D.V.Chalapathi Rao, filed appearance for respondents 1 & 9; and 3rd respondent had died and respondents 2, 4 to 8 had been served.

5. However, the advocates who entered appearance for the respondents did not appear at the time of hearing of these Revisions.

6. Petitioner in both these Revisions is the plaintiff in O.S.No.69 of 2010 on the file of the V Additional District Judge(FTC), Warangal at Jangaon.

7. She filed the said suit for partition of the plaint schedule property and for allotment of 1/4th share to her. In the said suit, she impleaded her father as 3rd defendant, her paternal uncle as

4th defendant, her brother as 2nd defendant and first sister as 1st defendant.

8. She contended that the plaint schedule properties belong to her grandfather by name Pulla Reddy and that she is entitled to a share therein.

9. While the suit was pending, 4th respondent/4th defendant filed I.A.No.142 of 2018 seeking amendment of the written statement raising a plea that the petitioner has not impleaded her own sister by name Usha Rani and also the sisters of defendants 3 and 4, namely Bolledla Vijaya and legal heirs of another sister late Kundunoori Padma.

10. This application I.A.No.142 of 2018 was allowed on 17.07.2018 and the 4th defendant was allowed to incorporate the pleading in the written statement regarding non-joinder of these persons to the suit as a ground to dismiss the suit.

11. Petitioner then woke up and realized the importance of impleading the said persons and filed I.A.No.144 of 2018 to implead her paternal aunt Bolledla Vijaya and the legal heirs of other paternal aunt Kundunoori Padma. She also filed another I.A.No.153 of 2018 to implead her own sister Usha Rani also as a defendant in the suit.

12. In the affidavits filed in support of these applications, she took the plea that she was not aware of the legal position that she

ought to implead these persons also in the suit and when she changed the counsel, he advised her to implead these persons as parties to the suit and so she ought to be allowed to implead them.

13. Counter was filed by the 4th respondent opposing the said applications and contending that petitioner cannot claim to be ignorant of the legal position and the applications cannot be maintained because the suit had been filed 8 years prior to the applications and trial has commenced in the suit.

14. By separate orders dt.17.07.2018, the Court below dismissed both the applications.

15. Assailing the same, these two Revisions are filed.

16. Counsel for the petitioner contended that the reasoning given by the Court below in dismissing both the I.A.s cannot be countenanced. He pointed out that when the 4th defendant was allowed to amend the written statement and raise a plea of non-joinder of necessary parties, who are the proposed parties, on 17.07.2018 in IA.No.142 of 2018 (*on the very same day of passing impugned orders*), when the petitioner is taking steps to implead such parties, the Court below could not have dismissed the said applications.

17. I find considerable force in the said submissions.

18. The reasoning of the Court below that the reason must be shown for earlier omission of the proposed parties, is clearly perverse. Although there is a finding given that the petitioner did not deposit process fee also, this fact is disputed by the counsel for the petitioner.

19. I am also of the view that the Court below was not correct in stating that the intention of the petitioner is to drag on the matter with malafide intention and to harass the respondent.

20. Therefore, both the Civil Revision Petitions are allowed; orders dt.17.07.2018 in I.A.Nos.144 and 153 of 2018 are both set aside; and both the I.A.s are allowed and the proposed parties are impleaded as defendants in the suit.

21. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

28th June, 2019.

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