

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.5656 of 2018

ORDER:

Heard Sri Alladi Ravinder, learned counsel for petitioners and Sri V.Ravi Kiran Rao, learned counsel for respondent Nos.2 and 3.

2. Petitioners in this Revision are plaintiffs in O.S.No.116 of 2010.

3. They filed the suit before the Principal Senior Civil Judge, Karimnagar for partition of the plaint schedule properties seeking 1/3rd share therein. They had mentioned 3 schedules of properties and in 'A' schedule, they had referred to property bearing premises No.4-3-83 (old) situated at Aslam Masjid road, Karimnagar.

4. But before registering the suit, an objection was raised by the Court below as to how the said item could be sought for partition, when according to petitioners, it was shown to be allotted to 1st defendant in the suit in another suit O.S.No.15 of 1998 when she is alive, and during her lifetime such partition cannot be sought.

5. In view of the said objection, the petitioners deleted the said item from the plaint schedule, but did not delete mention of it in the pleadings in the plaint. Thus, the plaint came to be registered without the said item in the plaint but containing an averment made in the main body of the plaint regarding it.

6. Learned counsel for respondents objected to this and asked the Court below to reject the neat copy of the plaint.

7. At that stage the 1st defendant having died, petitioners filed I.A.No.88 of 2018 requesting the Court below to permit them to amend the plaint by incorporating an alternative prayer “a decree may be passed in accordance with law in view of changing circumstances of the parties in view of death of defendant No.1”.

8. The respondents questioned the same in C.R.P.No.2734 of 2018 by contending that without the alternative prayer in the suit having any foundation in the pleading, the Court below could not have permitted the same. He also sought to contend that since defendants/respondents had not filed additional written statement pursuant to the amendment now ordered, liberty may be given to them to raise all objections available in this behalf.

9. This Court accepted the same and disposed of C.R.P.No.2734 of 2018 on 27-04-2018 granting liberty to the respondents to file additional written statement to the amendment of the prayer which was allowed in favour of the petitioners.

10. Thereafter respondents/defendant Nos.2 and 3 filed additional written statements and also made a Counter-claim in respect of the premises bearing House No.4-3-83 referred to above contending that the 1st respondent, who obtained the same by virtue of final decree passed in O.S.No.15 of 1998 by the III Additional District Judge, Karimnagar, died on 03-06-2014 and on her death, the petitioners as

well as defendant Nos.2 and 3 being her Class-I legal heirs, would have 1/3rd share each in it. They also paid Court Fee on it.

11. Petitioners then filed I.A.No.228 of 2018 under Order VIII Rule 6-C of C.P.C. to exclude the Counter-claim from the additional Written statements filed on 11-06-2018 by respondents/defendant Nos.2 and 3 on the ground that they were belated and against procedure contemplated under Order VIII Rule 6-A C.P.C. and also contrary to the order passed in C.R.P.No.2734 of 2018.

12. It was their contention before the Court below that in the initial written statement filed by defendant Nos.1 and 2, a stand was taken that premises bearing D.No.4-3-83 is not a joint family property, that the husband of 1st defendant and his brothers had filed O.S.No.15 of 1998 seeking partition and possession of the joint family properties and in the said suit, the premises bearing No.4-3-83 was allotted to the husband of 1st defendant and subsequently it was divided into 4 shares, of which one share was allotted to the husband of 1st petitioner and defendant Nos.1 to 3 were allotted a share each and so, the said house was not available for partition; and having taken such a plea in the original written statement, defendant Nos.2 and 3 cannot now seek for partition of the same item.

13. The Court below, however, held that this discrepancy arose between the original written statement filed by defendant Nos.1 and 2 and the additional written statement-cum-counter-claim filed by 2nd defendant only but would not apply to the 3rd defendant, who had

not taken such a stand in the original written statement. It opined that whether the principle of estoppel is applicable to the 2nd defendant or not can only be decided only after trial, and instead of asking the parties to file a separate suit for the properties of 1st defendant, there is nothing wrong in permitting the parties to incorporate the property of 1st defendant in the present suit by way of counter-claim so that there would be an end to the litigation. It also noted that the main purpose of the petitioners to file I.A.No.88 of 2018 is that if the property is found to be self acquired property of the 1st defendant, it has to be partitioned; and now that defendant Nos.2 and 3 also filed Counter-claim for the same purpose, and so the said Counter-claim cannot be rejected.

14. Assailing the same, this Revision is filed.

15. Learned counsel for petitioners sought to contend that the Court has power under Order VIII Rule 6-C C.P.C. to exclude a Counter-claim on the ground that the plaintiff wanted the counter-claim to be decided in an independent suit and under Order VIII Rule 9 C.P.C., a subsequent pleading after a written statement is filed by defendant cannot be allowed, except by leave of the Court.

16. Admittedly, this Court had granted permission to defendant Nos.2 and 3 to file additional written statement in the order dt.27-04-2018 in C.R.P.No.2734 of 2018. Therefore it is not open to the petitioners to now contend that such additional written statements could not have been received.

17. Also, the claim of defendant Nos.2 and 3 is that the property bearing No.4-3-83 was the property which had fallen to the share of the 1st defendant and that 1st defendant had died on 03-06-2014. This being an event subsequent to the filing of the suit in 2010, the situation which prevented the petitioners from seeking partition as on the date of the suit itself had vanished. That was why I.A.No.88 of 2018 had been filed by them seeking alternative prayer in the suit to take note of the death of the 1st defendant and changed circumstances and to pass a decree accordingly.

18. This being the position, when respondents/defendant Nos.2 and 3 have filed counter-claim for the same purpose; and they are entitled to make such a Counter-claim in view of the subsequent event of the death of 1st defendant pending suit, it cannot be said that the Court below had not correctly entertained the counter-claim. Entertaining such counter-claim would prevent multiplicity of proceedings and petitioners also would not be effected thereby since they would also get an opportunity to file written statement to the Counter-claim opposing the Counter-claim and also to lead evidence in support of such a pleading.

19. Therefore, I see no merit in the Revision and it is accordingly dismissed.

20. However, the Court below is directed to permit the petitioners to file written statement to the Counter-claim made by defendant Nos.2 and 3 and file documents in support of the stand taken by

petitioners in such a written statement and also to lead evidence in that regard. Adequate time shall be granted to both parties to file necessary documentary evidence in respect of the claims and Counter-claims of the parties even with regard to Counter-claim and defence to the Counter-claim. No costs.

21. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-01-2019

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