

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

C.R.P.No.6879 of 2018

ORDER:

Heard the learned counsel for the petitioner and Sri K.Anup Kumar, learned counsel for the respondents.

2. This Revision Petition is filed challenging the order dt.27-10-2018 in I.A.No.1747 of 2018 in O.S.No.47 of 2004 of the IX Additional Chief Judge, City Civil Court at Hyderabad.

3. Petitioners are legal representatives of the 1st defendant and are defendants D-9 to D-11 in the suit.

4. The said suit was filed by respondent Nos.1 to 8 for partition of the plaint schedule properties and allotment of 1/6th share in the plaint A to D schedules, 7/24th share to plaintiff Nos.1, 7 and 8, 1/24th share to plaintiff Nos.3 and 4 together and 1/24th share to plaintiff Nos.5 and 6 together.

5. Written Statement was filed by the 1st defendant/1st petitioner mentioning in para-29 of the Written Statement dt.17-09-2004 that there were five other properties also which are joint family properties and are required to be partitioned among the parties. But no Court Fee was paid thereon.

6. After the matter proceeded for trial and the evidence on the side of the plaintiffs was closed, the petitioners herein filed

I.A.No.1747 of 2018 under Section 151 CPC to grant leave to them to file additional Written Statement.

7. In the said application, they stated that in the Written Statement filed by the 1st defendant, five properties were mentioned in para-29 and partition was also sought for properties, but no Court Fee was paid and there was no mention about boundaries of those properties and therefore, they should be permitted to file additional Written Statement.

8. This application was opposed by respondent Nos.1 to 8 who contended that Order VIII Rule 9 CPC deals with filing of additional Written Statement but the said provision of law has not been quoted; that the suit is of the year 2004 and was being dragged on by the petitioners and other defendants for more than 14 years and there is no necessity to file additional Written Statement. It is also contended that at this point of time, a counter claim by way of additional Written Statement by paying Court Fee cannot be allowed as it would further delay in disposal of the suit.

9. By order dt.27-10-2018, the Court below dismissed the said application. It noted that the matter was posted for defendants' side evidence since 31-08-2018 and at that stage, this I.A. had been filed on 25-09-2018; that P.Ws. had been cross examined at length covering various aspects; and petitioners are now seeking to file additional Written Statement and pay Court Fee, which cannot be

permitted. It opined that Court Fee can be ordered to be paid and collected by the Court at any stage even by way of putting up a check slip but petitioners cannot have better additional Written Statement than the original Written Statement filed by their own father; and there are no changed circumstances or subsequent events warranting filing of the additional Written Statement.

10. Assailing the same, this Revision Petition is filed.

11. Learned counsel for the petitioners contended that omission of the 1st defendant to pay the Court Fee on the counter claim or mentioning boundaries in the Written Statement filed by him and the five properties mentioned in para-29 was *bona fide* and the petitioners cannot be denied the opportunity in filling additional Written Statement though there is some delay in filling the same.

12. Learned counsel for the respondent Nos.1 to 8 refuted the said contentions and supported the order passed by the Court below. He also contended that the properties which are mentioned in para-29 of the Written Statement are not joint family properties. But they belong to certain third parties who are not impleaded, and 1st respondent is already 85 years old and is anxious to see the suit disposed of at the earliest.

13. No doubt, the suit is for partition and separate possession in respect of plaint A and F schedule properties. Written Statement had been filed by the 1st defendant on 17-09-2004. Later he died in

2011 and petitioners were brought on record. Thereafter, they adopted the Written Statement of the 1st defendant and the matter proceeded to trial and the evidence on the side of the respondent Nos.1 to 8 has been completed. At that stage, when the matter was posted for the petitioners and other dependents' evidence, this application has been moved by the petitioners.

14. Obviously, the 1st defendant as well as petitioners were negligent in paying the Court Fee and in giving the particulars of the properties mentioned in para-29 i.e. boundaries. They ought to have taken steps to pay the Court Fee or to include those particulars by way of amendment before the trial commenced.

15. If at this point of time, they are permitted to file additional Written Statement, grave prejudice would be caused to the respondent Nos.1 to 8 because already 14 years have elapsed since the filing of the suit and 1st respondent is aged 85 years.

16. If the properties claimed by the petitioners in para-29 of the Written Statement filed by 1st defendant are proved to be joint family properties, then undoubtedly respondent Nos.1 to 8 would run the risk of having their suit dismissed on the ground of not having included all the joint family properties and sought partition in the plaint, because the suit for partial partition is not maintainable.

17. But when the respondent Nos.1 to 8 are willing to take that risk, the petitioners cannot be shown any indulgence by allowing

them to file additional Written Statement and also paying Court Fee on the counter claim made at this point of time.

18. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

19. The Civil Revision Petition fails and is accordingly dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-02-2019
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