

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

CIVIL REVISION PETITION NO.6794 OF 2017

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt. 10.11.2017 in I.A.No.1655 of 2017 in O.S.No.255 of 2010 on the file of the XXV Additional Chief Judge, City Civil Court, Hyderabad.

Petitioner herein is plaintiff in the suit.

He filed the said suit against the respondents for partition and separate possession of half portion of the plaint schedule property. The third defendant filed written statement denying plaint averments and contending that there is an oral gift by one Hajira Bee on 20.02.1992 in favour of the third defendant.

Petitioner, by filing I.A.No.1655 of 2017 invoking Order VIII Rule 9 of the Code of Civil Procedure, 1908, then sought to file a rejoinder to the written statement of the third defendant simply denying the said oral gift.

Counter affidavit was filed by the third respondent opposing the said application stating that he had filed written statement on 01.04.2015 and the instant I.A.No.1655 of 2017 seeking permission to file rejoinder was filed after three long years and so, it cannot be permitted.

Accepting this plea, the Court below dismissed I.A.No.1655 of 2017 stating that the petitioner did not explain the delay in seeking to file rejoinder to the written statement of the third defendant.

Assailing the same, this Revision is filed.

Counsel for the petitioner sought to contend that unless the petitioner denies the said oral gift made in favour of third defendant by Hajira Bee by way of filing of rejoinder, grave prejudice would be caused to the petitioner in the suit.

I am of the opinion that the pleadings in the plaint as well as the written statement will have to be established by the respective parties, and in situations like the instant case, there is no necessity to specifically file a rejoinder denying the oral gift because burden to prove the same would lie on the third defendant/third respondent and he has to discharge the said burden.

Since there is no valid explanation for the delay in filing the rejoinder for a period of 2 ½ years after filing of the written statement by the third defendant, the Court below, in my opinion, did not commit any error of jurisdiction in refusing to permit the petitioner to file the rejoinder.

Accordingly, the Revision fails and is dismissed. However, the pleadings taken in the written statement of the third defendant would have to be established by the third defendant by leading evidence in support of the said pleading.

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

(M.S.RAMACHANDRA RAO, J)

13th August 2019
RRB