

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.114 of 2020

ORDER :

1. This Revision is filed by the petitioners challenging the order dt.13.12.2019 in IA.No.688 of 2019 in OS.No.3120 of 2017 of the VII Junior Civil Judge, City Civil Court, Hyderabad.
2. Petitioners are defendants in the said suit.
3. The respondents/plaintiffs had filed the said suit against the petitioners for partition of the suit schedule property and for allotment of 1/18th share to themselves and also to the petitioners.
4. The 1st petitioner is the mother of petitioners 2 to 6. Respondents 1 and 2 are the sons of the 2nd petitioner.
5. Respondents contend that the suit schedule property, a house, is an ancestral joint family property and was acquired by late D.Krishna Rao, husband of 1st petitioner and father of other petitioners; that he died on 21.04.2017 leaving behind the petitioners as his legal heirs; that the petitioners were harassing the mother of the respondents for additional dowry and she had filed a case under Section 498-A IPC against the petitioners 1 to 6 and also MC.No.189 of 2015, and that the respondents and their mother were staying separately. They alleged that their father-2nd petitioner had 1/6th share out of which the respondents are entitled to 1/3rd share.

6. Written statement was filed by the 1st petitioner opposing these contentions and denying that the suit schedule property is the ancestral property of late D.Krishna Rao. He also denied that respondents have any share in the suit schedule property.

7. According to the petitioners, the suit schedule property is a self acquired property of late D.Krishna Rao, and he obtained it under a notarized agreement of sale dt.22.01.2001 from his vendor after paying Rs.5 lakhs. They contended that late D.Krishna Rao was an employee of the State Electricity Board and was drawing a good salary. It is also stated that he has no ancestral properties.

8. Evidence on both sides was concluded and the matter was posted for arguments in the suit.

9. At that stage, the 6th petitioner filed I.A.No.688 of 2019 stating that she was asked to adduce evidence as DW3 in the suit, but she could not give evidence as she was undergoing treatment for Kidney in a private hospital for the last five years, that she was discharged from the hospital recently, and she is now able to give evidence before the Court.

10. The respondents opposed the same and denied the contentions of the 6th petitioner in the IA. They pointed out that the 6th petitioner has not filed any documents before the Court below in support of her contention and that arguments in the suit

were already addressed on behalf of the respondents, that the matter is now coming up for addressing of the arguments by the petitioners, and only with an intention to delay the disposal of the suit, this application is filed.

11. By order dt.13.12.2019, the Court below dismissed the said application. It recorded that on 12.11.2019, DW2 was examined and the suit was posted to 22.11.2019 for further evidence of the petitioners, but on the said date, the counsel for petitioners reported no evidence on behalf of the petitioners; and considering the said representation, the Court had closed the evidence on the side of the petitioners and posted the matter to 25.11.2019 for arguments. It also held that on that date, the counsel for the respondents argued the matter and the matter was adjourned for arguments of the petitioners to 05.12.2019 and on that day, the instant application has been filed.

12. The Court also recorded that the petitioners 1 & 2 are the mother and brother of the 6th petitioner and they had been examined as DWs.1 and 2, and there was no separate plea taken by the 6th petitioner and she only adopted the written statement of the 2nd petitioner and the application had been filed only to delay the disposal of the suit. It also held that the 6th petitioner did not disclose the name of the hospital, in which she got admitted for her kidney treatment and there were no justifiable grounds to allow the I.A.

13. Assailing the same, this Revision is filed.

14. Heard counsel for petitioners, who contended that the 6th petitioner could not give evidence in the Court below because of her kidney ailment and grave and irreparable loss would be caused to the petitioners if the Court below is not directed to re-open the evidence of the petitioners for taking the evidence of the 6th petitioner and that earlier.

15. Admittedly, no material has been placed before the Court below or before this Court about the alleged illness of the 6th petitioner. That apart, the 6th petitioner had simply adopted by memo the written statement filed by the 2nd petitioner; and the petitioners 1 and 2, who were mother and brother of the 6th petitioner, had already given evidence and the evidence on the side of the petitioners had been closed on 22.11.2019. It is also not in dispute that arguments had already been advanced by the respondents' counsel and the matter was coming up for the submission of arguments by the counsel for the petitioners.

16. In the above scenario, I hold that the Court below had not committed any error of jurisdiction in refusing to re-open the suit to enable the 6th petitioner to give evidence; and the application appears to have been filed only to delay the disposal of the suit. I therefore do not find any merit in this Revision.

17. Accordingly, this Civil Revision Petition is dismissed. No order as to costs.

18. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

30th January, 2020.

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