

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE

PRESENT
THE HONOURABLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION NO: 1297 OF 2014

Petition under Article 227 of Constitution of India, aggrieved by the Order dated 25/02/2014 in IA No.377/2013 in OS No.76/2011 on the file of the Court of the III Additional District and Sessions Judge, Gadwal.

Between:

1. Pasaladi Narayana (died) per LRs
2. Pasaladi Shakunthala, W/o. late P. Narayana,
Age 70 years, Occ: House wife, R/o. H.No. 3-2-637/1,
Kachiguda, Hyderabad
3. Pasaladi Mallikarjuna Raju, S/o. late P. Narayana
Age 52 years, Occ: Govt. employee,
R/o. H.No. 3-2-637/1, Kachiguda, Hyderabad
4. Pasaladi Ramana Raju, S/o. late P. Narayana
Age 46 years, Occ: Business,
R/o. H.No. 4-2/2, Pushpa Nursing Home,
Opp: New Bus Stand, Near Water Tank,
leeja village, Mahabubnagar District
5. Pasaladi Basava Raju, S/o. late P. Narayana
Age 39 years, Occ: Business,
R/o. H.No. 14-145, Near Nadi Majeed,
Neelakanteswara Swamy Street, leeja village,
Mahabubnagar District.
6. Pasaladi Sabitha, W/o. Machani Shiva Shankar,
(D/o. late P. Narayana), age 45 years, Occ: Govt. employee,
R/o. H.No. 3-2-637/1, 2nd floor, Kachiguda,
Hyderabad
7. Pasaladi Kalyani, W/o. Agnoor Ganesh,
(D/o. late P. Narayana), age 43 years, Occ: Govt. employee,
R/o. H.No. 3-2-637/1, 2nd floor, Kachiguda,
Hyderabad
8. Jalaja Masan, W/o. Shrikant Masan,
(D/o. late P. Narayana), age 37 years,
Occ: House wife, R/o. H.No. 16-2-741/13/10,
Asman Gadh, Near TV Tower, Malakpet, Hyderabad

...Revision Petitioners/ Respondents/Plaintiffs

AND

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Dr. P. Mahadevraj, S/o P. Ganganna.
Age 60 years, Occ: Agriculture, R/o. H.No. 14-146.

leeja village & Mandal, Mahabubnagar District

... Respondent/Petitioner/Defendant

CRPMP. NO: 1802 OF 2014

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to stay all further proceedings in O.S.No.76 of 2011 on the file of III Additional District & Sessions Judge, Gadwal, Mahabubnagar.

For the Petitioners : SRI M.ACHUTA REDDY, Advocate

For the Respondent No.1 : SRI SHAFATH AHMED KHAN, Advocate (Not Present)

The Court made the following ORDER

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CRP No.1297 of 2014

ORDER:

1. The revision petitioners/respondents/plaintiffs have filed this Civil Revision Petition under Article 227 of the Constitution of India, assailing the order dated 25.02.2014 in IA No.377 of 2013 in Original Suit No.76 of 2011 on the file of the learned III Additional District and Sessions Judge, Gadwal.

2. The plaintiffs have filed the Original Suit No.76 of 2011 for partition and separate possession of the suit schedule properties. The defendant has filed his written statement on 09.04.2012. After framing the issues, trial commenced on 11.06.2012, when the evidence affidavit of PW.1 was filed, later cross-examination was completed, through Advocate Commissioner on 25.01.2013. Thereafter, on behalf of the plaintiffs, PW.2, who is the son of PW.1/first plaintiff was examined in March, 2013 and plaintiffs' evidence, was reported as 'closed'. After closing the plaintiff's evidence, on behalf of the defendant, evidence affidavit of DW.1 was filed. He has also examined his brother-in-law as DW.2 and the defendant's evidence was also closed and the matter was being adjourned for arguments.

3. At that stage, the present application in IA No.377 of 2013 under Order-VI, Rule-17 CPC was filed by the defendant for amendment of the pleadings by incorporating para-11 (d) and (e).

adding certain additional properties in his written statement after para-11 (c). It is alleged by the petitioner/defendant that the plaintiff has not covered the properties fallen to his share during the course of partition and he was unable to give proper instructions to his counsel at the time of filing the written statement due to oversight and the proposed amendment is very much essential in the written statement, otherwise the defendant would suffer irreparable loss and injury.

4. Heard learned counsel for the revision petitioners/plaintiffs. There is no representation for the respondent/defendant, though Sri Shafath Ahmed Khan, advocate has filed Vakalat and he remained absent without any representation.

5. Admittedly, the defendant has filed IA No.377 of 2013 under Order-VI, Rule-17 CPC after closure of the evidence on both sides. The defendant has not taken any such plea with reference to the properties that are mentioned in para-4 of his affidavit for incorporating the same as para-11 (d) and (e) of his written statement either in his original written statement or in the cross-examination of PW.1 or in his evidence as DW.1 or in the evidence of DW.2. Though he has mentioned in his affidavit that he could not give proper instructions to his counsel and that the plaintiffs have not covered the properties fallen to his share in the course of partition, I do not find any justification in the plea of the defendant, as he was not at all diligent in making such plea.

6. The learned counsel for the revision petitioners/plaintiffs also relied on the following decisions:

- i) *Vidyabai and others v. Padmalatha and others*¹;
- ii) *Pandit Malhari Mahale v. Monika Pandit Mahale and others*²;
- iii) *S. Malla Reddy v. Future Builders Co-operative Housing Society and others*³; and
- iv) *Ayesha Rizwana v. Mushtaq Ahmed*⁴.

7. I have carefully perused the principles laid in the above decisions. The Hon'ble Supreme Court in *Vidyabai's* case (1 supra) has held that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties and only if such condition is fulfilled, the amendment is to be allowed. However, the proviso appended to Order-VI, Rule-17 CPC restricts the power of the Court. It puts an embargo on exercise of its jurisdiction. The Court's jurisdiction in the cases of this nature is limited. Thus, unless the jurisdictional fact as envisaged therein is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint.

8. Thus, under the proviso of Order-VI, Rule-17 CPC, no application for amendment shall be allowed after the trial is commenced, unless in spite of due diligence the matter could not be

¹ AIR 2009 SC 1433

² (2020) 11 SCC 549

³ 2013 (4) ALD 40 (SC)

⁴ 2013 (6) ALD 115

raised before commencement of trial. In the present case, except making a bald statement, in his affidavit at para-4, the defendant has not stated how he could not mention the details in his written statement.

9. As stated above, after filing the written statement, issues settled, evidence let in on both sides and the application in IA No.377 of 2013 was only filed after closure of the defendant's evidence and there is no iota of evidence to show that the defendant was diligent and that despite due diligence, he could not raise any such issue before settlement of issues or before conclusion of the trial. Thus, no such finding is recorded by the Court below that in spite of due diligence, the defendant could not introduce the proposed amendment before commencement of the trial or at least before conclusion of the trial. In that view of the matter, the impugned order of the trial Court is unsustainable.

10. In the result, the Civil Revision Petition is allowed setting aside the impugned order dated 25.02.2014 in IA No.377 of 2013 in OS No.76 of 2011 on the file of the III Additional District and Sessions Judge, Gadwal. Considering the fact that the Original Suit was filed in the year 2011 for partition and separate possession of the suit schedule properties and the evidence on both sides concluded and it is only pending for arguments, the learned trial Judge shall dispose of the Original Suit within three months from the date of receipt of a

copy of this order. Both the parties shall cooperate with the trial Court for expeditious disposal of the Original Suit, as directed. In the circumstances of the case, there shall be no order as to costs.

11. Miscellaneous applications, if any pending in this revision petition shall stand closed.

//TRUE COPY//

Sd/-K.SAILESHI
ASSISTANT REGISTRAR


SECTION OFFICER

To

1. The III Additional District and Sessions Judge, Gadwal, Mahabubnagar District. (with records, if any)
 2. One CC to Sri M.Achutha Reddy, Advocate (OPUC)
 3. One CC to Sri Shafath Ahmed Khan, Advocate (OPUC)
 4. Two CD Copies
 5. One Spare Copy
- Kj.

ANS

HIGH COURT

DATED:31/12/2021

ORDER

CRP.No.1297 of 2014



ALLOWING THE CRP WITHOUT COSTS.

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28/1/22
HVR