

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

CIVIL REVISION PETITION No.28 of 2017

ORDER:

This revision arises out of an order dated 16.12.2016 passed in I.A.No.653 of 2016 in O.S.No.6 of 2011 (partition suit) on the file of the II Additional District Judge, Karimanagar. The said application was filed by the petitioner – defendant No.3 under Section 151 of the Civil Procedure Code seeking for inclusion of three house properties (described as Item Nos.1, 2 and 3 in the schedule in I.A.No.653 of 2016) in the suit schedule properties.

2. It is the case of the petitioner – defendant No.3 that written statement has been filed in the partition suit instituted by the respondent No.1 herein. In the written statement, he has specifically stated that there are other immovable properties owned and possessed by the respondent No.1 - plaintiff as well as defendant Nos.2, 4 and 5. It was also averred that the plaintiff has filed a false suit concealing the real facts and included the self-acquired properties of the petitioner – defendants No.3 in the plaint schedule in order to grab them.

3. The Court below, under the impugned order, dismissed the petition by giving a finding that the petitioner has not assigned any reason for filing the instant application at the belated stage when the suit is posted for cross-examination of P.W.1. It further observed that if the plaintiff intentionally did not include the petition schedule properties in the suit schedule in O.S.No.6 of 2011, the petitioner - defendant No.3 can agitate the said fact and pray for dismissal of the main suit for non joinder of necessary properties.

4. Heard Mr. P. Giri Krishna, learned counsel for the petitioner and Mr. K. Venumadhav, learned counsel for the respondent No.1 – plaintiff.

5. Having perused the record, this Court is of the opinion that there are no merits in the CRP. In para 3 of the written statement of the petitioner – defendant No.3, while adverting to the claim of the plaintiff that the suit schedule properties are ancestral properties, asserted that the said properties are self-acquired properties of the petitioner – defendant No.3. Further, it was stated that other joint family properties are not included. Thus, the claim made by the petitioner in I.A.No.653 of 2016 does not go along with the claim made by him in his written statement. Even according to the petitioner – defendant No.3, the house properties, which he wanted to be included in the suit schedule, are joint family property whereas the suit schedule properties are self-acquired properties. Being the defendant, it is not for the petitioner to call upon the plaintiff to include additional properties in the suit and that too without making a counter claim. In the given circumstances, if the petitioner had bonafides, he should have filed a counter claim along with the written statement and sought for inclusion of additional properties. Thus, on facts and under law, the revision petition is misconceived.

The civil revision petition is dismissed. However, this order does not come in the way of the petitioner, if he chooses to institute a separate suit for partition in respect of the house properties described in I.A.No.653 of 2016. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

B. VIJAYSEN REDDY, J