

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THURSDAY THE SECOND DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE K. SUJANA

CIVIL REVISION PETITION NO: 3474 OF 2023

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to set aside by the order dated 12.10.2023 passed in I.A.No.69 of 2023 in OS No. 130 of 2015, on the file of the Additional Senior Civil Judge cum Assistant Sessions Judge Mancherial Camp Court at Luxettipet.

Between:

1. Jigidi Sujatha, W/o.Late Dummani Srinivas, Age 39 years, Occ Teacher,
2. Dummani Leena Varma, D/o.Dummani Srinivas, Age 17 years, Occ. Student,
3. Dummani Swani Varma, D/o.Dummani Srinivas, Age 13 years, Occ. Student, (The Petitioner No.2 and 3 being minors, Rep. by their natural guardian i.e. mother i.e. Petitioner No.1) All are R/o.H.No.10-7/1, Luxettipet, presently residing at Collage Road, Mancherial, Dist. Mancherial.

...Petitioner(S)

AND

1. Dummani Amrutha, W/o.Late Sayanna, Age 67 years, Occ. House Wife, R/o.H.No.10-95, Luxettipet, Dist. Mancherial.
2. Peetem Varalaxmi, W/o.Late Ramaiah, Age.47 years, Occ. Junior Assistant in Tahsil Office at Kasipet,
3. Bodakunta Sandhya Rani, W/o.Thirupathi, Age.45 years, Occ. House Wife, R/o.H.No.5-104/4, Uthkoor village of Luxettipet Mandal, Dist. Mancherial.
4. Pettam Kavitha, W/o.Thirupathi, Age 37 year, Occ. House Wife, R/o.H.No.3-96, Luxettipet, Dist. Mancherial.

...Respondents

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in OS No.130/2015 on the file of Additional Senior Civil Judge cum Assistant Sessions Judge Mancherial Camp Court at Luxettipet.

Counsel for the Petitioner(s):SRI. Kondadi Ajay Kumar

Counsel for the Respondent Nos 2 to 4: Rudresh Deshpande

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE K. SUJANA

CIVIL REVISION PETITION No.3474 of 2023

ORDER:

This Civil Revision Petition is filed against the order dated 12.10.2023 passed in I.A.No.69 of 2023 in O.S.No.130 of 2015 by the Additional Senior Civil Judge-cum-Assistant Sessions Judge, Mancherial, Camp Court, Luxettipet, wherein the petition is filed under Order 18 Rule 3 read with 151 of CPC to permit defendant Nos.1 to 3 to cross examine PW1, after cross examination of PW1 by defendant Nos.4 to 6 who are sailing with the plaintiff.

2. Brief facts of the case are that the respondent/plaintiff has filed the suit for partition and separate possession, claiming a 1/4th share in property in the name of the petitioner's husband/defendant No.1/Srinivas). The respondent has named defendant Nos.4 to 6 (the petitioner's husband's sisters) as proforma parties, though they are not necessary parties to the suit. The plaintiff failed to file a counter-claim in response to the written statement filed by defendant Nos.4 to 6, who also claim a share in the property. After the amendment, defendant Nos.4 to 6 filed a written statement and counter-claim. Despite this, the respondent did not file a rejoinder to challenge defendant Nos.4 to 6 claims. However, the petitioner/defendant Nos.1 to 3 filed a rejoinder denying defendant Nos.4 to 6 claims over the

property. The petitioners submit that the plaintiff's failure to deny defendant Nos.4 to 6 claims implies tacit support for those claims, suggesting that the plaintiff is aligned with defendant Nos.4 to 6. The petitioners stated that if they cross-examined PW1 earlier, the plaintiff might have denied defendant Nos.4 to 6 claims, but the opportunity was lost. It is submitted that the petitioners deny any alignment with the plaintiff and states that it is the plaintiff's failure to file a counter-claim that is allowing defendant Nos.4 to 6 to grab a share in the property. They stated that the Court has already allowed the written statements of defendant Nos.2 to 4 after amendment, and thus, the matter should be adjudicated on its merits, but not on assumptions of collusion.

3. After hearing both sides, the trial Court dismissed the petition stating that all the parties are setting up their claim on three different issues. In such a case, there is no question of sailing by respondent/plaintiff with respondents/defendant Nos.4 to 6. Unless and until there is oral and documentary pleadings which should convenience the Court which cannot be impliedly conclude that respondent/plaintiff is sailing with respondents/defendant Nos.4 to 6 and mere non filing of the rejoinder for counter-claim of defendant Nos.4 to 6 who too asserting their right and share over the suit schedule properties itself is not suffice and same cannot be said that petitioner/plaintiff is sailing

with defendant Nos.4 to 6. Aggrieved by the same, the present petition is filed.

4. Heard Mr. Kondadi Ajay Kumar, learned counsel for the petitioners and Mr. Rudresh Deshpande, learned counsel for the respondents. Perused the material on record.

5. Learned counsel for the petitioners has contended that the trial Court has failed to see that the petition is ordered and the petitioners permitted to cross examine PW1 after cross examination conducted by defendant Nos.4 to 6, no prejudice would cause to any of the parties. The trial Court ought to have considered the petition without going into the technicalities of the case and erroneously came to the conclusion that none of the parties are sailing with each other and all the parties are setting up their claim on three different issues. It is submitted that the trial Court concluded that defendant No.1 failure to file a rejoinder does not amount to sailing with defendant Nos.4 to 6. As such, prayed the Court to set aside the same.

6. Learned counsel for the petitioners submits that as defendant Nos.4 to 6 are sailing with the plaintiff, the Court has to give permission to defendant Nos.1 to 3 for cross examination of PW1 after cross examination by defendant Nos.4 to 6.

7. Going through the said contention, the plaintiff has filed the suit for partition against defendant Nos.1 to 3. Defendant No. 1 is the wife of Sri Dummani Srinivas, and Defendant Nos. 2 and 3 are his daughters. Dummani Srinivas passed away on 13.10.2013. The plaintiff originally filed the suit asserting that defendant Nos.1 to 3 are the only legal heirs and representatives of the deceased. Defendant Nos.4 to 6, the sisters of Dummani Srinivas, were later impleaded as parties to the suit as co-sharers, seeking partition of the deceased's property.

8. The written statement filed by defendant Nos.4 to 6 stating that Dummani Srinivas was mentally depressed and often lost in thought. It is submitted that from the time of defendant No.1 marriage to Dummani Srinivas, the plaintiff and defendants Nos.4 to 6 suffered both mentally and physically, allegedly due to property-related issues. They claim that Dummani Srinivas was not allowed to live a peaceful life, and even after his death, the plaintiff and defendant Nos.4 to 6 continue to suffer at the hands of defendants Nos.1 to 3, due to their alleged greed. Furthermore, defendants Nos.4 to 6 assert that within 11 days of Dummani Srinivas's death, the plaintiff and defendant Nos.1 to 3 falsely claimed that the plaintiff was entitled to a share in the disputed property by submitting an application to the Revenue Authority. They stated that this situation has forced defendant No.1 to live in a rented house in Mancherla with defendant Nos.2 and 3.

They also accuse the plaintiff and defendant Nos.4 to 6 of colluding with each other.

9. In response to the written statement filed by defendant Nos.4 to 6, defendant Nos.1 to 3 filed a rejoinder. They stated that defendant Nos.4 to 6 are strangers to the property and have no legal right to it. They further contended that the mother of Dummani Srinivas, who filed the suit challenging her deceased son's will and claiming the property, is entitled to a share. However, defendant Nos.4 to 6, despite being sisters of the deceased, have no claim to the property and are only included as proforma parties in the suit.

10. The contention of the plaintiff is that defendant No.1 has applied to the Revenue Authorities, stating that she and her daughters are the only legal heirs of the late Dummani Srinivas. She also obtained a dependent certificate that excludes the plaintiff's name. Whereas, the contention of defendant Nos.1 to 3 is that Dummani Srinivas was the absolute owner and possessor of the property, and there is a gift settlement deed in his name. Additionally, the grandmother of Dummani Srinivas gave 2 Acres of land and a portion of the house to defendant Nos.4 to 6 immediately after their respective marriages, along with gold and silver ornaments. Thus, the entire property was

divided among the family members, and Dummani Srinivas enjoyed the property.

11. It is submitted that the plaintiff filed the present suit at the instance of defendant Nos.4 to 6. The plaintiff used to quarrel with Dummani Srinivas over various issues. In 2010, she had a quarrel with him, separated, and began residing with defendant No.4. She also began collecting rent from two portions of a house bearing No.10-95 owned by Dummani Srinivas. Even then, neither Dummani Srinivas nor defendant No.1 objected to her actions. Furthermore, the plaintiff has been receiving a pension of more than Rs.10,000/- per month.

12. It is further submitted that during Dummani Srinivas' lifetime, the plaintiff, along with defendant Nos.4 and 6, frequently quarreled with him over the property. The contentions of defendant Nos.1 to 3 suggest that the plaintiff resided with defendant No.4 and filed the suit at the instance of defendant Nos.4 to 6. They also claim that defendant Nos.4 to 6 are sailing with the plaintiff, although they do not admit to being sailing with her. Despite this, the common cause of all parties seems to be the division of Dummani Srinivas' property. Therefore, it can be concluded that defendant Nos.4 to 6 are, in fact sailing with the plaintiff. Whereas trial Court observation is that mere non filing of rejoinder by plaintiff it cannot be concluded that plaintiff and defendant

Nos.4 to 6 are sailing with each other, which is not proper, when the common object of plaintiff and defendant Nos.4 to 6 is for the partition of late Srinivas's property. Trial Court erred in deciding the same. Further this Court issued circular instructions to the trial Court in the year 1956 itself to meet the situations like this.

13. According to the High Court Circular in ROC No.554/56.B.1, dated 09.04.1956, when defendants are sailing with the plaintiff, they are not allowed to cross-examine the plaintiff but may conduct further chief examination.

14. In view of the above Circular dated 09.04.1956, the trial Court is directed to act in accordance with the said Circular and the order of the trial Court dated 12.10.2023 passed in I.A.No.69 of 2023 in O.S.No.130 of 2015 is hereby set aside and accordingly, the Civil Revision Petition is allowed. No order as to costs.

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

Sd/- T. JAYASREE
ASSISTANT REGISTRAR


SECTION OFFICER

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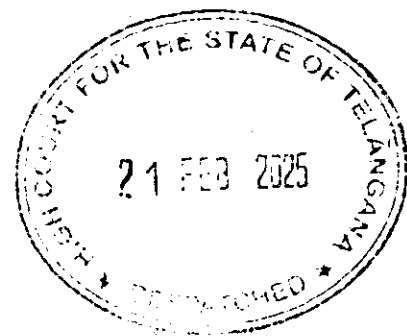
To,

1. The Additional Senior Civil Judge cum Assistant Sessions Judge Mancheri Camp Court at Luxettipet. (with records if any)
2. One CC to SRI. Kondadi Ajay Kumar, Advocate [OPUC]
3. One CC to SRI. Rudresh Deshpande, Advocate [OPUC]
4. Two CD Copies



HIGH COURT

DATED:02/01/2025



ORDER
CRP.No.3474 of 2023

CIVIL REVISION PETITION IS ALLOWED.

⑥
12/02/25
bvs