

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION NO.314 OF 2014

ORDER:

The petitioners are plaintiffs in O.S.No.15 of 2006 on the file of the V Additional District Judge, Karimnagar.

The said suit was filed by one Rajamallaiah seeking partition of plaint 'A' and 'B' schedule properties on the ground that they were acquired by his mother and she died intestate. The plaintiffs' evidence was completed and the first defendant was also examined. At the stage of examination of the second defendant, the plaintiffs, after the death of the original plaintiff, filed I.A.No.415 of 2013 seeking amendment of the plaint by including 'C' schedule property without seeking necessary amendments in the plaint. The said application was opposed by the defendants. The lower Court, after considering the pleadings, dismissed the application by order dated 29.11.2013. Challenging the same, the present Civil Revision Petition is filed.

The affidavit filed in support of the application states that the petitioners came to know with regard to one immovable property bearing H.No.3-8-388/6/261, Mettuguda, Secunderabad, Hyderabad, purchased by their grand mother in the name of the first defendant and the said property was purchased by the grand mother with the joint family funds. Accordingly, they sought inclusion of that property in the present suit for partition. It was opposed by the second respondent stating that the first defendant, while he was studying in Hyderabad, was having acquaintance with one N.Rajeshwar Rao, Basheerbagh, Hyderabad. He executed Deed of Gift out of love and affection in favour of the first defendant while he was practicing as an advocate. The original owner also executed a document on 26.11.1992 admitting the transfer of the property by way of Gift Deed. Later on, the first defendant constructed a house, which is having D.No.12-8-388/6/26 after obtaining permission on 15.04.1997.

The suit was filed in the year 2006 and the first defendant

constructed the house in the year 1997. The original plaintiff, who died subsequently, must be knowing the fact of existence of a house, which is now sought to be included as 'C' schedule property. The door number mentioned in the affidavit in support of the petition and the door number mentioned in the counter does not tally. There is no explanation for filing the petition for amendment after closure of the evidence of the plaintiff. Further the plaintiffs did not seek any amendment in the plaint, except seeking inclusion of 'C' schedule property in the suit. The lower Court dismissed the application with the following observations.

“The petitioner has also not produced any piece of document to prove his allegation against the first defendant in respect of proposed property to show prima-facie that the said property was purchased by their grand mother. However, the first respondent in support of his contention, filed copy of gift deed and copy of its regularization to satisfy the Court, from which it appears prima-facie that the proposed property is acquired by first respondent by way of gift deed from N.Rajeshwar Rao. Hence, I feel that the principle laid down in the above decision is not applicable to the case on hand and the proposed amendment will prejudice the case of first defendant and the facts and circumstances of the case in the reported decision are quite different from the facts and circumstances of the case on hand. Therefore, I am of the opinion that the proposed amendment sought by petitioner will not be accepted at this stage as the trial in this suit has already commenced and plaintiff's side evidence is closed and the second defendant was examined as DW.1 and she marked Ex.B.1 to B.41 and the suit is posted at request for cross examination of DW.1 by the plaintiff.”

I am of the opinion that the discretion of the lower Court does not warrant any interference in the facts and circumstances of the case.

The Civil Revision Petition is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(A.RAMALINGESWARA RAO, J)

21st January 2016

RRB