

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2339 of 2013

ORDER :

This Revision is filed challenging the order dt.03.04.2013 in IA.No.45 of 2013 in OS.No.51 of 2010 on the file of Senior Civil Judge, Repalle.

2. The petitioners herein are defendants in the above suit.
3. The respondents/plaintiffs filed the above suit for specific performance of a contract of sale dt.24.02.1999 and 13.04.1999 and for a perpetual injunction restraining petitioners from interfering with their peaceful possession and enjoyment of plaint schedule property.
4. The respondents/plaintiffs also filed IA.No.465 of 2010 in OS.No.51 of 2010 under Order 39 Rule 1 and 2 CPC for a temporary injunction restraining petitioners from interfering with the peaceful possession and enjoyment of plaint schedule property by respondents. However, the said application was dismissed on 05.09.2011.
5. Thereafter, IA.No.45 of 2013 was filed by respondents under Order 6 Rule 17 CPC to permit them to amend the plaint by substituting the relief of consequential possession in the prayer in the original plaint and also to add the words “for consequential possession” of the plaint schedule landed property at para no.13(a)(i) in between sub-paras (a) and (b) at para no.13 of the plaint.

6. The said application was opposed by petitioners on the ground that trial has commenced and amendment of prayer as sought for by respondents cannot be granted. It is also asserted that respondents were never in possession of plaint schedule property.
7. By order dt.03.04.2013, the court below allowed IA.No.45 of 2013 in O.S.No.51 of 2010.
8. It held that whether respondents were in possession and enjoyment of suit schedule property by the date of suit and whether they were dispossessed from suit schedule property after dismissal of I.A.No.465 of 2010, is a question of fact, which can only be adjudicated at a full-fledged trial but not at this stage; and that the relief of recovery of possession is not barred by limitation, since the suit is based on an agreement of sale and not on the basis of only possession of respondents over the plaint schedule property.
9. Challenging the same, this Revision is filed.
10. It is the contention of counsel for petitioners that the application for amendment of plaint has been sought after trial has commenced, and this is not permitted by amendment to Order 6 Rule 17 CPC and after introduction of proviso thereto which restricted the power of the Court to allow amendments after trial has commenced.
11. Admittedly, in the present case, the case of respondents was that after dismissal of I.A.No.465 of 2010 filed by them for temporary injunction pending suit, they were dispossessed by petitioners. This is an event which has occurred subsequent to

filing of suit.

12. In this view of the matter, the restriction that plaintiff should have sought this relief prior to commencement of trial would not come in the way of plaintiff seeking relief of recovery of possession.
13. I n **Sri Konaseema Co-operative Central Bank Ltd., Amalapuram and another v. N. Seetharama Raju and Indian Rly. Class II Officers Feedn. and another v. Anil Kumar Sanghi and others**, this Court and the Supreme Court held that amending the plaint by seeking relief of recovery of possession in the place of relief of injunction originally sought for, would not alter the nature of suit.
14. Therefore, I am of the opinion that the Court below has rightly allowed the application for amendment of plaint filed by respondents. I do not find any merit in the Revision and the same is accordingly dismissed. No order as to costs.
15. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-06-2015

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