

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2226 of 2015

ORDER:

The petitioners in this civil revision petition are the defendants in O.S.No.221 of 2014 on the file of the learned I Additional Junior Civil Judge, Eluru. The plaintiff in the said suit, the respondent herein, filed I.A.No.37 of 2015 therein seeking amendment of the plaint. By order dated 18.03.2015, the trial Court allowed the I.A. Aggrieved thereby, the defendants are before this Court by way of this civil revision petition filed under Article 227 of the Constitution.

By order dated 19.06.2015, this Court granted interim stay of further proceedings in the suit, being of the opinion that the order under revision reflected that the Court below did not consider the impact of the amendment sought and baldly allowed the petition without discussion.

Despite service of notice, the respondent/plaintiff did not choose to enter appearance before this Court either in person or through learned counsel.

The suit, O.S.No.221 of 2014, was filed by the respondent/plaintiff for a permanent injunction restraining the petitioners/defendants from interfering with his peaceful possession over the suit schedule property. While so, he claimed that the petitioners/defendants had illegally and highhandedly dumped some sand, chips and waste material in item No.2 of the plaint schedule. This material was stated to be causing hardship to the free access of the respondent/plaintiff and his family members to the RCC building in item No.1 of the plaint schedule. He therefore sought amendment of his plaint to introduce pleadings in this regard and also amend his suit prayer by including the relief of a mandatory injunction to remove the material dumped in item No.2 of the plaint schedule. This amendment petition was contested by the petitioners/defendants by way of a counter. The trial Court, however, allowed the amendment by

adverting to the issue of ownership and title of the parties to different items of the plaint schedule and opining that the Court could not give any finding either in respect of item No.2 of the plaint schedule or on Ex.R1 under which the petitioners/defendants claimed title in respect of the said item. The trial Court therefore concluded that if the respondent/plaintiff was not having any title or right over the suit schedule property, the petitioners/defendants could contest the matter and produce all the relevant evidence to disprove the contention of the respondent/plaintiff. Therefore, for proper adjudication of the matter, the trial Court was inclined to allow the amendment.

This consideration by the trial Court touching upon the merits of the matter was not at all warranted at the stage of permitting the amendment of the plaint. What was required in law was that the trial Court examine the nature of the amendment sought and as to whether it had the effect of changing the nature of the suit itself. Admittedly, the amendment sought was in relation to events which had taken place after the institution of the suit. This aspect of the matter also had to be considered by the trial Court as to whether such amendment could be permitted when the cause of action therefor arose subsequently. Unfortunately, none of these aspects were considered by the trial Court and upon a misdirected analysis of the merits of the matter, the trial Court allowed the amendment.

The order under revision therefore cannot be sustained and is accordingly set aside. The matter is remitted to the file of the trial Court for consideration afresh of I.A.No.37 of 2015 in O.S.No.221 of 2014 in accordance with law.

The civil revision petition is allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

1st September, 2015
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