

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Civil Revision Petition No.452 of 2015

Date: 20-03-2015

Between:

Sree Swamy Ayyappa Seva Samajam, represented

By its President S.S. Subrahmanyam, Kavali

.. Petitioner

AND

Dakarapu Nageswara Rao and 5 others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Civil Revision Petition No.452 of 2015

ORDER:

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This Civil Revision Petition is directed against the order dated 12-12-2014 in I.A.No.1475 of 2003 in O.S.No.219 of 2003 on the file of Principal Junior Civil Judge's Court, Kavali allowing the petition filed under Order 6 Rule 17 of the Code of Civil Procedure to amend the plaint as prayed for.

2. The case of the petitioner is that the suit is filed by the respondents 1 to 5 herein against the revision petitioner and the 6th respondent herein for declaration and for permanent injunction. It is stated that taking advantage of the order in I.A.No.732 of 2002 dated 23-07-2003, the 1st respondent/ defendant installed Dwajasthambham in the petition schedule property and the shadow of

the said Dwajasthambham is falling on the houses of the petitioner, which is considered to be inauspicious and hence, the present application is filed to add the relief of mandatory injunction as prayed for. The Court below, on considering the facts and circumstances of the case and the subsequent events after filing of the suit, allowed the said application for amendment. Aggrieved by the same, the present revision petition is filed.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. Learned counsel for the petitioner submits that the court below erroneously allowed the amendment of plaint after a period of more than 10 years that too after closure of the plaintiffs' evidence, which cannot be allowed at this distance of time. He further submits that the amendment of plaint would change the nature of the suit and that the plaintiffs kept quiet all these days and raised the plea after more than 10 years, which cannot be permitted.

5. In the present case, the same pleas and contentions raised herein were already raised before the Court below before allowing the application, but the trial Court, considering the same and the facts and circumstances of the case, allowed the application holding that the petitioners are entitled for amendment since Dwajasthambham was installed after filing of the suit and subsequent to the orders in I.A.No.732 of 2001 dated 23-07-2003. The Court below also held that if the petitioners are permitted to amend the prayer no cause of action would change since there is no failure on the part of the petitioners to ask the said prayer why because the installation was happened subsequent to the orders in I.A.No.732 of 2001 and the rights of the parties over the schedule property will be decided in the trail of the suit. On perusal of the order under revision, the court below has rightly exercised its jurisdiction vested in it and time and again this Court and the Apex Court held that the courts should liberally allow amendment in order to avoid multiplicity of proceedings, until it would not change or alter the cause of action. It is for the revision petitioner herein what all contentions raised herein can raise before the court below during trial, which can be determined by the court below, more so, it is not the case of the revision petitioner that the present application is filed recently, but the same is filed way back in the year 2003 itself.

6. In view of above facts and circumstances, the order under challenge does not suffer from any legal infirmity or illegality warranting interference of this Court in exercise of restricted revisional jurisdiction under Article 227 of the Constitution of India, and hence, the Civil Revision Petition is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

Date: 20-03-2015

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