

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.4078 of 2014

ORDER:

Heard the learned counsel for petitioners and the learned counsel for respondents.

2. Defendants 2 to 6 in O.S.No.1838 of 2004 on the file of the Court of II Additional Junior Civil Judge, Warangal (for short, trial Court) are the petitioners herein. Respondents 1 and 2 herein filed the said suit against petitioners and respondents 3 to 7 herein for permanent injunction in respect of an extent of Ac.3-12 guntas of land in survey No.144/A and 144/B, situated at Urus Shivar Village, Warangal Mandal and District. Before filing the said suit, the petitioners herein filed O.S.Nos.1727 to 1731 of 2004 on the file of the Court of the Principal Junior Civil Judge, Warangal in respect of individual plots of land possessed by them. Now all the suits were clubbed together.

3. After ten years of filing the present suit i.e., O.S.No.1838 of 2004, respondents 1 and 2 herein, who are the plaintiffs, filed I.A.No.54 of 2014 seeking amendment of the plaint for mandatory injunction directing the defendants (petitioners and respondents 3 to 7 herein) to remove the five single rooms with compound wall constructed over part of the scheduled property on the ground that during the pendency of the suit, the defendants made constructions in a part of the scheduled property. Petitioners herein filed a counter stating that they already filed separate suits for injunction in O.S.Nos.1727 to 1731 of 2004 in respect of their respective house plots situated in survey No.143/D of the same village. They denied the encroachment of the land of respondents 1 and 2 and stated that the proposed amendment would change the nature of the suit. Respondents 1 and 2 herein lead their evidence as defendants in the said suits and cross-examination of D.W.1 was completed on 20.11.2008.

4. The trial Court, by order dated 25.09.2014, allowed I.A.No.54 of 2014 on the ground that the amendment would not cause any prejudice to the petitioners herein. The trial Court observed that if the plaintiffs fail to prove their claim after full-fledged trial, they will not be entitled for permanent injunction, much less, the relief of mandatory injunction. Challenging the said order, the present Civil Revision Petition is filed.

5. In view of the allegation made by respondents 1 and 2 herein and denial of the encroachment by the petitioners herein, the title of the parties has to be decided, if the relief of mandatory injunction is asked. The original suit was filed only for permanent injunction and the title in the said suit will be considered only incidentally. If the plaintiffs are aggrieved and are claiming title in respect of the encroached partition, they are at liberty to file a separate suit for recovery of possession based on the title. In the affidavit filed in support of the proposed amendment, they did not indicate the details of the extent of land alleged to have been encroached by the defendants and the said amendment was filed after ten years of filing the suit for permanent injunction.

6. In the circumstances, the trial Court committed an error in allowing I.A.No.54 of 2014 and hence the order of the trial Court dated 25.09.2014 in I.A.No.54 of 2014 in O.S.No.1838 of 2004 is set aside. The Civil Revision Petition is, accordingly, allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 30.12.2015
TJMR