

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION Nos.1343 of 2015 and 1362 of 2015

COMMON ORDER:

These two Civil Revision Petitions are filed under Article 227 of the Constitution of India, challenging the orders dt.26-02-2015 in I.A.No.46 of 2015 in O.S.No.66 of 2013 and order dt.26-02-2015 in I.A.No.45 of 2015 in O.S.No.65 of 2013 of the Principal Junior Civil Judge, Proddatur at Kadapa.

2. The petitioners in both these Revisions are defendant Nos.3 and 4 in the above suits. Respondent Nos.1 to 4, who are plaintiffs in O.S.No.66 of 2013 and 1st respondent in O.S.No.65 of 2013 had filed suits for perpetual injunction against petitioners and others adverting to their title to the respective suit schedule properties.
3. Written statements were filed in the suits, issues framed and trial commenced.
4. Thereafter respondent Nos.1 to 4 in C.R.P.No.1343 of 2015, who are plaintiffs in O.S.No.66 of 2013 and 1st respondent in C.R.P.No.1362 of 2013, who is plaintiff in O.S.No.65 of 2013 filed I.A.No.46 of 2015 in O.S.No.66 of 2013 and I.A.No.45 of 2015 in O.S.No.65 of 2015 to amend the plaint seeking declaration of their respective titles over the property having regard to the plea raised in the written statements by petitioners/defendants questioning their title.
5. These applications were opposed by the petitioners contending that it would change the nature of suit and is not permissible and that the amendment is being sought after the commencement of trial and is barred by the Amendment to the Code of Civil

Procedure made in the year 2002.

6. By separate orders dt.26-02-2015, the Court below allowed the said applications. It held that even if the amendment is allowed, the burden lies on the respective plaintiffs to prove their pleadings and the proposed amendment would not take away or fill up any gaps in the evidence of P.W.1. It held that amendment is necessary for deciding the real dispute in question and even if the result of allowing the amendment would be to take away the matter out of the pecuniary jurisdiction of the said Court, it would only return the plaint and direct the respective plaintiffs to present it before the appropriate Court. It further held that the proposed amendment would not change the nature of suit and mere seeking for declaration of title in a suit for permanent injunction would not change the nature of suit.
7. Challenging the same, these Revisions are filed.
8. The learned counsel for petitioners submits that the Court below erred in allowing the applications and the orders of the Court below cannot be sustained. He pointed out that it would alter the nature of suit and amendment ought not to have been permitted after commencement of trial in view of Amendment to the Code of Civil Procedure in the year 2002. He further contended that the consequence of allowing amendment would be making the Court below disabled to hear the suits since it would not have pecuniary jurisdiction and it would then be forced to return the plaints.
9. A reading of the plaints filed in both suits indicate that respective plaintiffs therein have asserted their title to the property and on that basis sought perpetual injunction against the petitioners and

other defendants. Thus, the suits are also based on title and not only on the basis of prior possession of the respective plaintiffs. Thus, the issue of title is also pleaded in the plaints originally filed by respective plaintiffs and is not something new. Only because the petitioners and other defendants had denied their title in their written statements, an occasion arose for respective plaintiffs to seek amendment of the plaints by seeking a relief of declaration also. It cannot be said that the nature of suit thereby got altered.

10. The contention of the learned counsel for petitioners that the amendment should not be allowed after trial has commenced also cannot be countenanced because the proviso added to Order VI Rule 17 of C.P.C. by the Code of Civil Procedure (Amendment Act 22 of 2002 w.e.f. 01-07-2002) itself states that such amendments can be allowed if the Court comes to conclusion that in spite of due diligence, a party could not raise the plea before the commencement of trial. In my opinion, this also would not operate as a bar to the respective plaintiffs seeking amendment of the plaints by seeking additional relief of declaration since in the original plaint, title was pleaded and only after written statement was filed the plaintiffs came to know of denial of their title. No prejudice is caused to petitioners since they would again get an opportunity to file additional written statement.

11. As regards the contention that pecuniary jurisdiction of the Court would be altered if amendment is allowed, even then in my view the Court does not lose the power to order the amendment. If such a result arises out of allowing the application for

amendment of plaint, the plaints will be returned to the plaintiffs for presentation before the appropriate Court having correct pecuniary jurisdiction.

12. Therefore, I do not find any error of jurisdiction in the orders passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India. Consequently, these Civil Revision Petitions are dismissed at the stage of admission. No costs.

13. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-04-2015

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