

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CRP.No.1385 of 2015

-  
Dt:24.04.2015

**Between:**

Mohd. Azmath, S/o Mohd Hussain  
and another.

**..... Petitioners**

**And:**

Nemuri Ramesh, S/o Vittal

**.....Respondent**

Counsel for the petitioners: Sri P.Krishna Reddy  
for Sri Pottigari Sridhar Reddy

Counsel for the Respondent:---

The Court made the following:

ORDER:

This Civil Revision Petition arises out of order, dated 25.02.2015, in I.A.No.853 of 2014 in O.S.No.173 of 2007 on the file of the Principal Junior Civil Judge-cum-V Metropolitan Magistrate, Cyberabad at Medchal, Ranga Reddy District.

The respondent filed the above-mentioned suit originally seeking the relief of perpetual injunction. After the written statement was filed by the petitioners, the respondent filed I.A.No.1366 of 2011 under Order VI Rule-17 CPC to permit him to amend the pleadings and prayer in the suit for granting a decree for declaration of title and recovery of possession of the suit schedule property. By order, dated 07.01.2011, the lower Court has allowed the said I.A. The petitioners have

unsuccessfully challenged the said order in CRP.No.905 of 2012 before this Court. Consequently, the respondent has filed the amended plaint copy. As the amended plaint copy did not disclose the cause of action for seeking the relief of declaration of title and recovery of possession, the petitioners filed I.A.No.298 of 2013 under Order VII Rule-11(a) CPC for rejection of the plaint. The said application was allowed by the lower Court on 25.09.2014 and the neat copy of the plaint (amended plaint) was rejected. Evidently, to cure the defect in the amended plaint, the respondent filed I.A.No.853 of 2014 under Order VI Rule-17 CPC seeking permission to amend the plaint by incorporating the cause of action para. This application was opposed by the petitioners mainly on two grounds, viz., (1) that with the rejection of the plaint, the suit proceedings stood terminated; and (2) that the second application for amendment is not maintainable as, already an amendment application was filed and allowed by the lower Court. Rejecting these objections, by order, dated 25.02.2015, the lower Court has allowed the said I.A. Feeling aggrieved by the said order, the defendants filed this Civil Revision Petition.

I have heard Sri P.Krishna Reddy, learned counsel representing Sri Pottigari Sridhar Reddy, learned counsel for the petitioners and perused the record.

The facts noted above would show that the lower Court has rejected the neat copy of plaint i.e., the amended copy of plaint on the ground that it did not disclose the cause of action with reference to the reliefs of declaration of title and recovery of possession incorporated consequent on allowing of I.A.No.1366 of 2011. As the respondent failed to seek amendment of cause of action para with reference to the reliefs proposed to be incorporated by way of amendment, the

petitioners have successfully encashed this lapse on the part of the respondent by getting the amended plaint rejected, vide order, dated 25.09.2014, in I.A.No.298 of 2013. However, releasing this lacuna the respondent has filed I.A.No.853 of 2014 seeking further amendment by incorporating the cause of action para.

Though it would have been appropriate for the respondent to have filed a comprehensive application for amendment, including amendment of the cause of action para also, evidently, due to the inadvertent lapse, he has failed to file such application. The petitioners cannot, therefore, be permitted to take advantage of such failure. As rightly opined by the lower Court what was rejected was the amended plaint and not the original plaint as, the same did not suffer from the absence of cause of action with reference to the relief sought therein. The second amendment was allowed by the lower Court with a view to effectuate the previous amendment allowed by it, by which the respondent was permitted to substitute the relief of declaration of title and recovery of possession in place of permanent injunction. Viewed from this angle, I do not find any material irregularity or jurisdictional error in the order of the lower Court in rejecting the petitioners' plea raised in I.A.No.853 of 2014.

For the above-mentioned reasons, the Civil Revision Petition is dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.1878 of 2015 filed by the petitioner for interim relief is dismissed as infructuous.

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*JUSTICE C.V.NAGARJUNA  
REDDY*

*24<sup>th</sup> April, 2015  
DR*

