

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

CRP No.3429 of 2014

Oral Order:

The plaintiff in O.S.No.145 of 2009 on the file of the Court of Principal Junior Civil Judge, Jagtial, Karimangar District is the petitioner in the present revision filed under Article 227 of the Constitution of India. In the present revision challenge is to the order passed by the said Court in I.A.No.14 of 2014 filed by the petitioner herein under the provisions of Order 6 Rule 17 r/w Section 151 of the Code of Civil Procedure and Rule 28 of Civil Rules of Practice.

Heard Sri E. Venkata Reddy, learned counsel for the petitioner and Sri CVR Rudra Prasad, learned counsel for the respondents apart from perusing the material available before this Court.

The petitioner herein instituted the said suit against the respondents herein for perpetual injunction. In the said suit the petitioner filed the present application under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment of plaint schedule sketch map and also to cause consequential amendments in the plaint. The learned Principal Junior Civil Judge by way of an order dated 17.7.2014 dismissed the said application filed by the petitioner herein.

Assailing the said order passed by the learned Principal Junior Civil Judge dismissing the I.A.No.14 of 2014, the present revision has been filed by the plaintiff/petitioner.

It is contended by the learned counsel for the plaintiff/petitioner that the order under revision is erroneous, contrary to law and it is opposed to the spirit and object of the provisions of Order 6 Rule 17 of the Code of Civil Procedure. It is further argued by the learned counsel that the proposed amendment sought would not

alter the nature of suit, as such the Court below ought to have allowed the application. It is nextly contended that the respondents herein did not file any counter opposing the application and since they do not suffer any prejudice, the court below ought to have allowed the application filed by the petitioner herein. It is also submitted by the learned counsel that had the contents of the affidavit filed in support of the application been considered by the Court below from proper perspective, the order under challenge would not have emanated.

On the contrary, it is contended by the learned counsel for the respondents that the order passed by the Court below is in accordance with Order 6 Rule 17 of the Code of Civil Procedure and there is no perversity nor jurisdictional error in the impugned order, as such the present revision is not maintainable under Article 227 of the Constitution of India. It is further submitted that in the event the reasons assigned in the affidavit filed in support of the present application for amendment has been accepted, the cause in the suit would become infructuous. It is further argued by the learned counsel for the respondents that cause of action for the present proposed amendment is different and the question of limitation will also come and the petitioner herein will have to institute an independent suit. It is further submitted that since the order passed by the Court below is well reasoned and well crafted, the same is not amenable for interference of this Court under Article 227 of the Constitution of India.

In the above background the issues that emerge for consideration of this Court are –

1. **Whether the order impugned in the present revision petition is in accordance with law ?**
2. **whether the same requires any correction by this Court under Article 227 of the Constitution of India ?**

The petitioner herein instituted the present suit seeking following reliefs :

“ The plaintiff prays that his suit may be decreed as under :

- i. That a decree for perpetual injunction may be passed restraining the defendants, their family members and servants or agents from causing illegal and unauthorized interference and invasion in the rights and possession of the plaintiff to remove the under ground pipe line from the plaint schedule land situated in Gullapeta Village which are more fully described in the plaint sketch annexed to the Plaint,
- ii. Costs of the suit such other further relief to which the Plaintiff is otherwise entitled may be granted.”

In the affidavit filed in support of the present application, it is the case of the petitioner herein that in order to avoid litigation with the respondent-first defendant he has removed the pipe line from the land of the first defendant as shown in the plaint schedule sketch and laid the same through the PWD road i.e. out side of the first defendant's land and it is necessary to amend the plaint sketch instead of earlier plaint sketch. It is a fact that the respondents herein did not oppose the said application by way of filing a counter. In the considered opinion of this Court the said reason of failure to file counter affidavit cannot be the sole ground for allowing the application. The learned Judge in the impugned order categorically observed that factum of removal of pipe line is only oral and except bare averments in the petition, the petitioner/plaintiff did not file any photographs or third party affidavits or any other documents into court to show that he removed the said pipeline from the land of the first defendant. It is well established principle of law that unless the impugned order suffers from perversity or jurisdictional error, invocation of jurisdiction of this Court under Article 227 of the Constitution of India is impermissible. The plaintiff/petitioner herein has miserably failed in showing any such perversity or jurisdictional error in the order impugned. Another aspect which needs to be mentioned is that the trial has already commenced. In these circumstances, this

Court is not inclined to meddle with the order passed by the Court below, rejecting the application filed by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure.

The Civil Revision Petition is meritless and is dismissed. No costs.

JUSTICE A.V. SETHA SAI

Dt: 25.3.2015

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