

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

C.R.P Nos.493, 502 and 519 of 2015

COMMON ORDER:

The revision petitioner, M/s.Bodan Filling Station rep. by its Managing Partner Smt.G.Sumathi is no other than defendant No.1 in the suit for eviction in O.S. No.20 of 2009 on the file of the Senior Civil Judge, Nizamabad District at Bodhan. It appears that the suit is pending at the stage of arguments. Similarly, the revision petitioner, is no other than plaintiff in O.S No.40 of 2008 maintained against the plaintiff of O.S No.20 of 2009 by name Smt.B.Padmavathi and another. After completion of evidence of the parties, the plaintiff in O.S No.20 of 2009 filed amendment petition to amend the description of the plaint schedule property confining to half of what is shown as plaint schedule property. The same was allowed by the trial Court vide order dated 09.07.2014 in I.A. No.11 of 2013. Pursuant to which, as the trial Court though supposed to give opportunity to the defendants to file their additional written statement and to frame any additional issue if arises and to reopen the evidence for further chief examination if any and further cross examination of plaintiff and his witnesses and to permit the defendants for any further evidence by recall or the like, for not afforded such opportunity, the revision petitioner (1st defendant) filed the petitions viz., I.A No.364 of 2014 to receive additional written statement; I.A No.363 of 2014 to frame additional issue and I.A No.362 of 2014 to reopen the evidence to recall PW1 for further cross examination and DW1 for further chief examination. These petitions since ended in dismissal vide common order dated 21.01.2015 the three revision petitions are filed impugning the same.

2. Heard before admission. Perused the record.

3. Now it is impugning that when there is composite lease unless there is partition and division of the property, the question of eviction of the undivided interest to execute does not arise even to decide on merits, apart from dismissal of the three petitions by the lower Court is unsustainable.

4. It is premature for this Court in the revision to go into the scope and in fact allowing the amendment application no way changes the cause of action much less prejudice to the right of the defendants. There is no time limit but for due diligence as per Order VI Rule 17 CPC as amended with effect from 01.07.2002. Here there is no revision challenging the amendment on what the plaintiff claimed for entire property now to confine half of the property, in seeking suit relief. Thus, whether entitled to the suit relief in whole as claimed earlier, since confined it to half of it by now claiming from the amendment is undoubtedly being decided on merits of the case after full dressed trial. As allowing the application for amendment is not deciding the lis but for deciding the right to raise the plea only.

5. However the fact remains that there must be an opportunity to the defendants to file additional written statement automatically once the amendment of plaint allowed as part the duty of the trial Court, needless to say equally after receiving additional written statement, to frame any additional issues if arise to decide on maintainability of the suit for half of original plaint schedule and after hearing parties as contemplated under Order XIV Rule 5 C.P.C and also pursuant to it, if necessary by recalling PW.1 and DW.1 for any further chief examination and cross examination, subject to the scope of lis and scope of the amendment. When such is the case the dismissal of the impugned applications no way sustain. Needless to say in disregard of the applications and its dismissal, the Court has to perform its duty in regard to what is referred supra, the revision petitions are thus disposed of without need to give further life the litigation by kept pending the revisions but for by directing the trial Court to afford opportunity to the parties as per the amendment of the plaint allowed, to file additional written statement, hear and frame necessary any additional issue or amendment of existing issues and to reopen evidence of both sides for any further examination only within the scope of the amendment any nothing beyond.

6. Accordingly, these Civil Revision Petitions are disposed of from

the hearing before admission and with no costs.

7. Miscellaneous petitions, if any, pending in these revision petitions shall stand closed.

Dr. B. SIVA SANKARA RAO,J

Date:20.02.2015
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