

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.152 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.12.12.2014 in I.A.No.914 of 2014 in O.S.No.243 of 2002 on the file of Principal Junior Civil Judge, Puttur.

2. The petitioner herein is the 3rd defendant in the above suit.

3. The suit had been filed by 1st respondent against petitioner and others in the year 2002 seeking relief of perpetual injunction in respect of property described in the schedule thereto.

4. In the written statement, the petitioner and other defendants took a plea that they are in possession and enjoyment of the suit schedule property and they also denied the possession of the 1st respondent.

5. On 19.04.2004, the 1st respondent sought amendment of the plaint by contending that although he is in possession of the suit schedule property, in case the court comes to the conclusion that the petitioner and other defendants are in possession of the property, he is advised to also seek in the alternative, a relief of declaration of title and recovery of possession by way of

abundant caution, and therefore, the application I.A.No.565 of 2004 be allowed.

6. The said I.A.No.565 of 2004 was allowed on 16.11.2011, and the amendment of the plaint was carried out.

7. Thereafter, the 1st respondent filed another application on 02.09.2014 to amend the plaint to incorporate certain paragraphs in the plaint originally filed stating that in March, 2004 defendant nos.1 and 2 trespassed into the property. This was numbered as I.A.No.914 of 2014.

8. The said application was opposed by petitioner and other defendants contending that the application has been sought belatedly and if really there was dispossession in March, 2004 as alleged in this application, the said fact would have been mentioned in the application filed by 1st respondent i.e., I.A.No.565 of 2004, which had been filed in April, 2004; that in his evidence, the 1st respondent had admitted that petitioner and other defendants were in possession of the plaint schedule property; and to get over possible plea of limitation, this present application has been filed seeking to incorporate an allegation that he was dispossessed in March, 2004.

9. By order dt.12.12.2014, the Court below allowed the said application on payment of costs of Rs.1,000/-. It observed that in I.A.No.565 of 2004, the 1st respondent had only sought amendment with regard to the relief portion of the schedule portion, but without a pleading, the relief portion cannot help the 1st respondent; the litigant public do not know about the legal terminology, provisions of law and what provisions are to be quoted to prove their case, and that was why they were engaging counsels invoking Order 3 of Civil Procedure Code, 1908; that the present I.A. was filed only as a sequel to I.A.No.565 of 2004; and if it is not allowed, the 1st respondent would suffer irreparable loss and hardship.

10. Challenging the same, the present Revision is filed.

11. Heard the counsel for petitioners, Sri P. Gangarami Reddy; and Sri V. Brahmaiah Chowdary, counsel for 1st respondent.

12. The counsel for petitioners contended that the proviso to Order 6 Rule 17 C.P.C. gets attracted since amendment of plaint is sought after the trial commenced and the suit is now coming up for arguments, and therefore, it was not open to the Court below to allow the application ignoring the said bar; that 1st respondent now intends to plead by way of amendment that he was

dispossessed in March, 2004; but when I.A.No.565 of 2004 was filed, since the 1st respondent was aware of the same, and he did not mention the said fact in the said application, the 1st respondent has acted negligently; it shows absence of due diligence; and therefore, the impugned order be set aside.

13. On the other hand, the counsel for 1st respondent refuted the above contentions. He contended that in April, 2004 when the 1st respondent/plaintiff sought amendment of the plaint by incorporating alternative reliefs of declaration of title and recovery of possession, the body of the plaint was not amended by oversight and mistake of the counsel, and therefore, the court below was right in allowing the I.A.No.914 of 2014 on payment of costs.

14. I have noted the submissions of both sides.

15. It is not disputed that the suit is posted for arguments and at that stage application for amendment of the plaint for incorporating paragraphs in the plaint (that the 1st respondent had been dispossessed in March, 2004). Therefore, unless due diligence is shown by 1st respondent, application for amendment cannot be allowed as per proviso to Order 6 Rule 17 C.P.C. Except stating that his counsel made a mistake in not mentioning this fact in the plaint as originally filed, no other reason is

given.

16. The I.A.No.565 of 2004 was, no doubt, allowed in 2011, but I.A.No.914 of 2014 was filed three years thereafter. If really there was dispossession of defendants/3rd petitioner in March, 2004 itself, the 1st respondent should have mentioned the same in the affidavit filed in support of I.A.No.914 of 2014. But he did not do so. This clearly indicates negligence on the part of 1st respondent, and by simply blaming his Advocate, he cannot seek to circumvent the bar imposed by proviso to Order 6 Rule 17 C.P.C.

17. When the 1st respondent had sought for amendment of the prayer in the plaint by seeking relief of declaration of title and recovery of possession, he also ought to have taken steps to add a para in the body of the plaint as to how he was dispossessed. In this view of the matter, the impugned order cannot be sustained.

18. Therefore, the order dt.12.12.2014 in I.A.No.914 of 2014 in O.S.No.243 of 2002 on the file of Principal Junior Civil Judge, Puttur is set aside; and the said I.A. is dismissed. Accordingly, the Civil Revision Petition is allowed. No order as to costs.

19. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28.08.2015

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