

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

C.R.P.No.4917 of 2014

ORDER:

This Revision Petition is filed challenging the Order dt.20-11-2014 in I.A.No.518 of 2014 in O.S.No.210 of 2009 of the Principal Junior Civil Judge, Proddatur.

2. Petitioner herein is the plaintiff in the above suit. He filed the said suit for eviction of the respondents, recovery of arrears of rent and for costs and contending that he is the owner of the plaint schedule property.

3. Written Statement was filed by the respondents on 26-10-2009 denying the title of the petitioner/plaintiff.

4. Issues were framed. Trial commenced and affidavit in lieu of chief examination of P.W.1 was filed. Thereafter on 15-10-2014 I.A.No.518 of 2014 was filed by the petitioner seeking amendment of the plaint by adding certain portions to the body of the plaint and also for seeking relief of declaration of his title to the property.

5. Counter affidavit was filed to this I.A. by the respondents opposing the amendments sought by the petitioner.

6. By Order dt.20-11-2014, the Court below dismissed the said I.A. It held that in view of Section 116 of the Indian Evidence Act, 1872 if the petitioner proves that he inducted the respondents into possession of the property on lease that would be sufficient for their eviction and there is no need for him to seek declaration of his title.

7. Questioning the same, this Revision Petition is filed.

8. The learned counsel for the petitioner contended that the

Court below erred in dismissing I.A.No.518 of 2014 filed by him seeking amendment of the plaint. He also contended that if the amendment is not allowed, grave prejudice would be caused to the petitioner and that the respondents would not suffer any disadvantage since they would have an opportunity to amend their written statement.

9. It is not in dispute that the suit was filed in the year 2009 and the written statement was filed on 26-10-2009 by the respondents. It is also not in dispute that issues were framed and affidavit in lieu of chief examination of P.W.1 has been filed. Thus, it is clear that the trial of the suit has commenced.

10. Order VI Rule 17 CPC states:

Order VI Rule 17 - Amendment of pleadings:

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.]

In view of the proviso of Order VI Rule 17 CPC, no application for amendment shall be allowed after the trial has commenced unless the Court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial.

11. In the affidavit filed in support of I.A.No.518 of 2014, it is stated that under the document dt.25-08-1971, the father of the petitioner purchased the property and the petitioner succeeded thereto and at the time of filing of the suit, he misplaced the document and could not fully explain the facts to his advocate. It is

further stated that the events are interrelated, that they are denying petitioner's title to the property and that to avoid multiplicity of suits and conflict of opinions, the petitioner sought to amend plaint by seeking declaration of his title.

12. There is no mention in the affidavit as to why the petitioner could not have filed this application before the trial commenced and why almost five years after the written statement was filed, he has moved this application. Thus, this Court is of the view that petitioner has not shown due diligence and that even though he could have raised the matter before the commencement of trial, he did not do so.

13. Also since the relief claimed in the suit is one for eviction on the basis of the title of the petitioner, even if the title of the petitioner is denied by the respondents, the issue of title is inherent in the pleadings and there is no reason why the petitioner should specifically seek for declaration of his title. As rightly held by the Court below even if he had no title, if the respondents are proved by the petitioner to be his tenants, in view of Section 116 of the Evidence Act, 1872 the petitioner could succeed.

14. Having regard to the above reasons, I do not see any merit in the Revision Petition since I am of the view that the Court below has not committed any error of jurisdiction in rejecting I.A.No.518 of 2014.

15. Therefore, the Civil Revision Petition is dismissed. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date : 23-01-2015

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