

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2399 of 2013

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.02.05.2013 in I.A.No.251 of 2013 in O.S.No.563 of 2007 on the file of Principal Junior Civil Judge, Tenali.

2. The petitioner herein is the plaintiff in the said suit.
3. He filed the said suit originally for a mandatory injunction directing respondent to remove the iron rod extension into his land up to a width of three feet on his northern side; to remove the sun shades erected by the respondent over and above six windows in the southern building wall of respondent in an extent of two feet towards south encroaching into his land; to remove RCC roof slab extended by the respondent to one feet into the petitioner's land beyond the southern side building wall of respondent; and also for a consequential perpetual injunction restraining the respondent and its persons from making any further constructions by encroaching into his land.
4. Written statement was filed disputing the suit claim.
5. During the pendency of the suit, an Advocate-

Commissioner was appointed and his report revealed that the respondent had constructed even its southern building by encroaching into the petitioner's side on the north-east corner of petitioner's property to an extent of 2 ½ inches width x 3 feet 6 inches length.

6. In view of the said report of Advocate-Commissioner, the petitioner filed I.A.No.299 of 2012 to amend the plaint by seeking recovery of possession of his extent of land showing it as 'B' schedule property in the suit, alleging that he is the owner of the plaint schedule property which includes the 'B' schedule property. The said application was allowed on 07.11.2012 and he was allowed to seek recovery of possession of 'B' schedule property also which forms part and parcel of the 'A' schedule, and to put him in possession of the same after removing the structures in it.

7. It is pertinent to note that the trial in the suit had commenced by July, 2010 itself, and I.A.No.299 of 2012 was allowed on 07.11.2012.

8. The petitioner then filed I.A.No.251 of 2013 again seeking an amendment to the plaint alleging that during the pendency of suit and also during the interim injunction order, the respondent high-handedly and illegally made further constructions with sun shades in its southern wall by encroaching into his land; it made further constructions by laying RCC roof slab in the upstairs portion by

extending the same into the petitioner's land; and that the respondent had even laid pipes abutting its southern building wall encroaching into his land. He alleged that he had also filed an application to punish them for willful disobedience of the injunction orders by the Court. He also alleged that these have been noted in the Advocate-Commissioner's report, and since they are subsequent events, he is entitled to bring them on record and seek proper relief. He therefore sought further prayer to remove the drainage pipes and also RCC roof slab which extends into his land, apart from the sun shades.

9. This application was opposed by respondent. He contended that after commencement of trial, no amendment shall be allowed; that petitioner should have asked this relief also at the time when he filed I.A.No.299 of 2012; and at the stage when the suit is now posted, i.e., for further evidence of petitioner, he has filed this application; and the matter is now coming up for cross-examination of DW.1.

10. By order dt.02.05.2013, the Court below dismissed I.A.No.251 of 2013. It held that the main suit was coming up for evidence of defendant, and at that stage, the present application seeking further amendment of plaint was filed; since petitioner had knowledge before filing of I.A.No.299 of 2012 (which had been filed by him previously for amendment), and since the Advocate-

Commissioner's report had been filed in the year 2009 itself, the petitioner cannot be allowed to again amend the plaint saying that it is an event subsequent to filing of suit. It, therefore, applied the proviso to Order 6 Rule 17 C.P.C. and held that petitioner had not shown due diligence in the matter. It further observed that when the petitioner had already sought for recovery of possession of 'B' schedule property after removing of encroachments therein, there is no need to make further amendment for the removal of drainage pipeline which is part and parcel of 'B' schedule property.

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

12. Heard Sri N. Sriram Murthy, counsel for petitioner; and Sri S. Leo Raj, counsel for respondent.

13. The counsel for petitioner contended that the order passed by the Court below is unsustainable and that the court below should have allowed the amendment sought for by petitioner; that he could not have urged the grounds raised in the application seeking amendment in the plaint, because the amendment was necessitated by events which took place subsequent to the filing of suit; even the amendment allowed by the Court below in I.A.No.299 of 2012 for recovery of possession of 'B' schedule property by removing encroachments therein had been allowed after trial had commenced; in fact, the said application

was also filed after the trial had commenced; and therefore the court below ought to have allowed the amendment sought for in this application also. He contended that the amendments now sought are necessary so that there won't be any complications at the stage of execution of decree in case the petitioner is successful in winning the case; and it is not for the court below to say that there is no need to make further amendments of reliefs sought for by petitioner.

14. On the other hand, the counsel for respondent refuted the same and supported the order passed by the Court below. He stated that in I.A.No.299 of 2012 itself the petitioner had sought amendment of plaint on the basis of the Advocate-Commissioner's report and the same had been allowed, and at that time the petitioner could have also sought for amendments in the present application; there is absence of due diligence on the part of petitioner; and the Court below had rightly dismissed the said I.A.

15. I have noted the submissions of both sides.

16. From the facts narrated above, it is clear that the suit was filed in the year 2007. The trial had commenced in July, 2010 and the Advocate-Commissioner's report had been filed in 2009. It appears that the Advocate-Commissioner in his report had pointed out that some

constructions/activity was done by respondent in the property allegedly belonging to petitioner.

17. The petitioner, had therefore, filed I.A.No.299 of 2012 after the trial had commenced by seeking recovery of possession of the plaint 'B' schedule property from the respondent, pointing out that the respondent had no right to occupy it. After contest, this application was allowed on 07.11.2012.

18. It is no doubt true that petitioner could have raised the grounds, which he is now seeking to raise in the application for amendment, at that time. But the fact remains that even that application had been allowed subsequent to the commencement of the trial and this further amendment by petitioner is warranted to avoid any complication at the time of execution, in the event he succeeds in the suit.

19. Having allowed I.A.No.299 of 2012 on 07.11.2012 after the trial had commenced, and having permitted the petitioner to amend the plaint to seek recovery of 'B' schedule property, in my considered opinion, the Court below has acted perversely in declining to allow the petitioner to include the prayer which he now seeks to include, by way of amendment.

20. It cannot be disputed that according to petitioner the events warranting further amendment have also

happened subsequent to the filing of suit, and therefore he could not have raised these pleadings or sought relief in regard to these aspects at the time when he filed the suit. Therefore, it cannot be said that there was lack of due diligence on the part of petitioner to raise these pleadings initially, when the suit was filed.

21. Even according to the court below, the relief now sought in the application for amendment is covered by the earlier relief sought in I.A.No.299 of 2012. If that is the position, the respondent cannot be said to be prejudiced in any way if the I.A.No.251 of 2013 is allowed. Admittedly, in any event, the suit is coming up for the evidence of defendant. It is not as if the trial had concluded totally.

22. Therefore, the order dt.02.05.2013 in I.A.No.251 of 2013 in O.S.No.563 of 2007 on the file of Principal Junior Civil Judge, Tenali is set aside. The Civil Revision Petition is allowed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 27.08.2015

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