

THE HON'BLE SRI JUSTICE K.C. BHANU
CIVIL REVISION PETITION No.388 OF 2015

ORDER:

This Civil Revision Petition, under Section 227 of the Constitution of India, is directed against the Order, dated 26.11.2014, in Interlocutory Application No.1609 of 2014 in Original Suit No.256 of 2008 passed by the Senior Civil Judge, Mangalagiri.

2. The aforesaid Interlocutory Application was filed to amend the boundaries of 'A' and 'B' schedule properties of the plaint stating that the 1st defendant occupied an extent of Ac.0-15 cents on western side of the plaint schedule property and he has been making attempts to encroach the remaining extent; that they got issued a legal notice, dated 05.12.2006, thereafter defendant Nos.2 to 4 and 6 raised temporary structures in the encroached portion of Ac.0-15 cents; that they stated in the plaint about the encroachments made by the defendants in the western side portion of the plaint schedule property, but due to inadvertence, they did not seek relief and steps for recovery of possession of the encroached extent of Ac.0-15 cents from the possession of defendant Nos.1 to 4 and 6. Hence the petition.

3. A counter affidavit has been filed in the Interlocutory Application stating that the petitioners therein already filed a petition for amendment of relief and the same was allowed; that again the present application was filed seeking amendment of boundaries of the schedule property; that the petitioners are not entitled to seek for amendment of the plaint in a piece-meal manner as per their convenience; that if the petition is allowed, entire cause of action will be changed and hence, they prayed to

dismiss the petition.

4. The learned Judge after considering the material available on record dismissed the petition observing that similar application was filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'CPC') for amending the plaint for relief of recovery of possession and that was allowed and thereafter, after framing additional issue, the suit was posted for cross-examination and within a short span of two months after allowing the application for amendment, the present application is filed.

5. Heard both sides.

6. Proviso to Rule 17 of Order VI CPC reads as follows:

“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.”

The trial of the suit had already been commenced. As seen from the affidavit filed in support of the petition, it is clear that no explanation was given as to why such an application has not been filed when they moved an application on earlier occasion under Order VI Rule 17 CPC for amendment of the plaint seeking the relief of recovery of possession. Proviso to Rule 17 of Order VI CPC restricts and curtails the power of the Court to allow the amendment in pleadings by enacting that no application for amendment is to be allowed after trial is 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.

7. Order II Rule 2(2) CPC provides that where a plaintiff omits

to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. So, the same principle would also apply to the interlocutory applications. No explanation was given by the petitioners for not seeking the relief in the earlier interlocutory application, which was filed under Order VI Rule 17 CPC. It is stated in the counter filed by respondent No.5 that the petitioners after filing of the suit, got amended the plaint under Order VI Rule 17 CPC, for 4 or 5 times. Therefore, the present application appears to have been filed to drag on the matter and the petition is devoid of merit.

8. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this revision shall stand closed.

JUSTICE K.C. BHANU

Date:13.02.2014
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