

HON'BLE SRI JUSTICE R. KANTHA RAO

Civil Revision Petition No.328 of 2016

ORDER:

This civil revision petition is directed against the order dated 17.11.2015 passed by the Principal Senior Civil Judge, Kakinada in IA No.1069 of 2015 in OS No.23 of 2015.

2. Heard Sri S.Subba Reddy, learned counsel appearing for the petitioner and Sri E.V.S.S.Ravi Kumar, learned counsel appearing for the respondent.

3. The revision petitioner is the defendant. The respondent /plaintiff filed the suit for eviction against the revision petitioner in respect of the scheduled premises. In the said suit, issues have been framed and chief examination affidavit of the plaintiff was filed. In the course of trial of the suit, when the matter was posted for cross-examination of PW.1, the revision petitioner filed a petition under Order VI Rule 17 of CPC seeking amendment of the written statement to insert a paragraph relating to the Charms Beauty Clinic. According to the revision petitioner, it was a typographical mistake and therefore, the amendment can be allowed.

4. It is true that the plaintiff also admitted that the revision petitioner has been running 'Charms Beauty Clinic' in the scheduled property. In the plaint, it is mentioned that the scheduled property bearing D.No.2-43-39, Bhaskaranagar, Kakinada, was leased out to the revision petitioner and tenancy was terminated by a notice with effect from December, 2014. The revision petitioner filed the written statement taking the plea that she is a tenant of the premises covered by D.No.2-43-39, Bhaskaranagar, Kakinada, even prior to purchase of the property by the respondent. Therefore, there is no dispute as to the identity of the subject tenancy. The respondent filed suit for eviction of

the revision petitioner in his individual capacity. The revision petitioner did not take any specific plea that the suit is not maintainable for non-joinder of necessary party. Further as rightly held by the learned trial court, it is for the plaintiff to choose the party against whom he files the suit. The defendant cannot be permitted to contend that the plaintiff has to implead 'Charms Beauty Clinic' as a party to the suit. It is also held by the learned trial court that the revision petitioner admitted in her notice Ex.A.2, as well as in the written statement, that she is a tenant under the plaintiff and therefore, she is not permitted to take the plea beyond her pleadings in the written statement. As already stated, the identity of the premises, which was leased out, is not in dispute. Therefore, it is not open for the revision petitioner to contend that without impleading 'Charms Beauty Clinic' as a party, the plaintiff cannot maintain suit. In any event, the amendment was sought after commencement of the trial and the revision petitioner failed to establish that in spite of her due diligence, she could not raise the same before commencement of the trial.

5. For the foregoing reasons, I am of the view that the learned trial court has rightly dismissed the petition i.e., IA No.1069 of 2015 in OS No.23 of 2015 on 17.11.2015, which order does not require any interference by this court.

6. Consequently, the civil revision petition is dismissed. No order as to costs. Miscellaneous petitions, pending if any in this revision, shall stand closed.

R. KANTHA RAO, J

Date: 18.03.2016
BSS

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