

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CRP No. 640 of 2015

ORDER:

The defendant Nos. 3 and 4 in O.S.No.29 of 1999 are the petitioners herein. The first respondent herein filed the said suit for specific performance and for consequential injunction as against the petitioners herein and two others. The said suit was decreed on 28.09.2007. Against the said Decree and Judgment, defendant Nos. 3 and 4 filed A.S.No.263 of 2007, which was renumbered as A.S.No.20 of 2013. When the said appeal was pending, the petitioners/appellants filed I.A.No.506 of 2012 in A.S.No.20 of 2013 seeking amendment of the Written Statement filed before the trial Court. The respondent/plaintiff in the said application objected to the application on the ground that the said plea was taken into consideration by the trial Court and after taking the same into consideration, the suit was decreed. The lower appellate Court dismissed the application for amendment with the following observations:

“ In the face of the said contentions by both sides, this Court perused the entire case records and also the Judgment of the trial Court in O.S.No.29 of 1999 and found that admittedly the petitioner herein has not taken the defence that the suit is barred by limitation while making different averments in the written statement. But a perusal of the Judgment clearly show that the trial court while disposing O.S.No.29 of 1999 clearly discussed the aspect of limitation on page No.25 and 26 in para No.23 of the judgment with regarding to the aspect of limitation and has also given a finding on the same. Hence the Court agrees with the petitioner that it is the duty of the Court to discuss on the aspect of the limitation of the suit even if the defendants have not pleaded the same in the written statement and finds that the trial court rightly performed its duties while disposing the suit vide O.S.No.29 of 1999 with regarding to the issue of limitation which is not pleaded by the petitioner herein on page No. 25 and 26 in para No.23 of the judgment, as such this Court concludes that the petitioner need not be further allowed to amend the written statement to raise the said issue when in fact the same is already answered by the trial Court in the judgment itself and allowing the petitioner to amend the written statement at this stage would amount to nothing but permission of de-nova trial which would be of no consequence to either of the parties in view of the finding already given on the said aspect. Hence decides this point against the petitioner”.

2. In a case of amendment of pleadings at the appellate stage, the

lower appellate Court should usually post the petition along with pending appeal to be disposed of by it after considering the evidence available on record, as the lower appellate Court would be in a better position to appreciate the tenability of the said application only after looking into the evidence on record. An application of this nature cannot be disposed of pending disposal of the appeal. It does not mean that the application for amendment should be allowed. In the circumstances, the impugned Order dt. 7.04.2014 is set aside and I.A.No.506 of 2012 is restored to file of I Additional District Judge, Vikarabad at Ranga Reddy District, to be considered along with A.S.No.20 of 2013 uninfluenced by the observations made in the Order of lower appellate court but consider the entire evidence on record at the time of disposal of the appeal.

3. Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 25.01.2016

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