

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.5256 OF 2016

ORDER:

In an amendment petition under Order - VI Rule - 17 read with Section 151 of the Code of Civil Procedure, 1908, moved by the plaintiff in O.S. No.75 of 2012 on the file of the learned Principal Senior Civil Judge, Mancheri, Adilabad District, where, he sought the relief of declaration of title and consequential perpetual injunction through I.A. No.756 of 2015, the trial Court while passing the order dated 01.09.2016, made the following observation under the point for determination in paragraph No.6 and allowed the petition:

“As seen from the records, the main suit is filed for declaration and consequential relief of perpetual injunction. However, the petition filed by the petitioner/plaintiff for grant of temporary injunction was dismissed and the Civil Miscellaneous Appeal was also dismissed. So far, the issues were not framed in the main suit. In view of the circumstances mentioned in the affidavit filed in support of the petition and the relief sought in the suit and also since the issues were also not framed, I hold that it is a fit case to permit the petitioner to amend the plaint as prayed for.”

2. The only reason appears to be that issues were not yet framed in the main suit and thereby allowed the interlocutory application. In fact it is settlement of issues but not framing of issues

and that the settlement of issues would involve filing of draft issues by both sides and thereupon to adjudicate, keeping in view, the reliefs claimed and on whom the burden rests to prove their stand and to settle the issues.

3. It is clear that the plaintiff having become unsuccessful before the trial Court as well as in C.M.A. No.2 of 2013 on the file of IV Additional District and Sessions Judge - cum - Family Court, Adilabad, as indicated by the learned counsel for both sides, sought to introduce the amendment seeking the relief of recovery of possession. Of course, the relevant facts were also sought to be introduced when counter was filed resisting the request; the trial Court has not kept in view, the requirements for adjudication of an amendment petition, such as, whether the amendment sought to be introduced would change nature and character of the suit. Thus, the order is bereft of reasons and, as such, the order under challenge is liable to be set aside and is, accordingly, set aside remitting the petition in I.A. No.756 of 2015 to the trial Court for disposal afresh directing to dispose of the same within two (2) months from the date of receipt of a copy of this order by assigning reasons in arriving at the conclusion.

4. The Civil Revision Petition is accordingly allowed as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the revision stand disposed of.

A. SHANKAR NARAYANA, J

December 2, 2016.

PV

