

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No. 1848 of 2013

Order:

The petitioner herein is the second defendant in OS No.37 of 2003 on the file of the Family Judge, City Civil Court, at Secunderabad. The respondents 1 and 2 herein filed the said suit on 25.07.2001 for declaration of title and possession. The said suit was numbered on 23.04.2003. In the meanwhile, the second defendant obtained a decree in OS No.1203 of 2001 on 12.07.2002. In view of the said decree, the plaintiffs wanted to add the relief of cancellation of decree and, for the said purpose they filed IA No.660 of 2005 in OS No.37 of 2003. The said application was allowed, by an order, dated 31.08.2007, holding that the amendment would take effect from 19.08.2005 and the respondents/defendants were given liberty to take the plea of limitation. Thereafter, the amended copy of plaint was filed and suit is posted for arguments. At the stage of arguments, the plaintiffs filed a memo on 28.12.2012 expressing their readiness to pay the court fee on the additional relief of cancellation of decree passed in OS No.1203 of 2001. Objections were filed to the memo stating that if court fee was paid, then only it can be construed that the plaint was duly instituted. It was also stated that the additional relief cannot be sought without payment of court fee and without valuing for the additional relief at this length of time. The plaintiffs cannot express readiness to pay the court fee without proper application. However, the memo was allowed on 14.03.2013 observing as follows.

“i) the plaintiffs should pay the costs of Rs.3000/- to the other side, if not paid so far within one week from the date of this order.

ii) the plaintiffs should also pay costs of Rs.500/- to the MLC, Sec-bad.

iii) the plaintiff should pay court fee of Rs.2626/- within one week from the date of this order and make necessary consequential amendment and file a neat copy of the plaint etc., within 10 days from the date of this order.

For compliance call on 26.03.2013.”

2. Challenging the said order, dated 14.03.2013, the present Civil Revision Petition is filed and, by virtue of the stay granted on 14.06.2013, the suit of the year 2003 is held up.

3. Learned counsel for the petitioner submits that the plaintiffs cannot seek permission of the Court to pay the court fee after four years of allowing the application in IA No.660 of 2005 without proper application. He further submits that the plaintiffs can take necessary objections with regard to amendment to be made in the plaint consequent to the payment of court fee also.

4. Now it is the admitted case of both the parties that the suit is coming up for arguments. The amended plaint consequent to the addition of relief was already filed and the parties had let in their evidence. Now the present issue is with regard to payment of court fee on the added relief at a belated stage.

5. In the circumstances, the Civil Revision Petition is disposed of giving liberty to the petitioner/second defendant to raise all the necessary objections consequent to allowing of the memo, enabling the plaintiffs to pay court fee after addition of new relief pursuant to the order in IA No.660 of 2005, dated 31.08.2007, at the time of advancing the arguments in the main suit. It is needless to observe that the lower Court shall take all the objections of the second defendant and consider the same along with main arguments and dispose of OS No.37 of 2003 in accordance with law on or before 30.04.2016. However, in the circumstances, no costs.

6. As a sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.

RAMALINGESWARA RAO, J.

Date: 04.02.2016

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