

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition Nos.653 and 654 of 2016

COMMON ORDER:

These two revisions are preferred against the common order passed by the Principal Junior Civil Judge, Narsipatnam, Visakhapatnam District in I.A.No.129 of 2012 and I.A.No.1035 of 2009 in O.S.No.119 of 2003 dated 06.11.2015. I.A.No.129 of 2012 was filed, under Order 6 Rule 17 CPC, to add B-schedule in plaint schedule property, add the relief of declaration and mandatory injunction, and to delete some sentences in para 3 of the plaint as mentioned by the petitioner.

The petitioner herein filed O.S.No.119 of 2003 for permanent injunction restraining the respondents from making any construction in the 30 link way located to the east of the property of the respondents. A written statement was filed by the respondents herein and, thereafter, the matter was posted to 28.12.2011 for trial. An order of status-quo was initially passed. In the written statement, the respondents herein contended that a wall had already been constructed on the subject property even before the Suit was filed. The petitioners, thereafter, sought amendment of the plaint to change the nature of the relief to one of mandatory injunction, and to amend the pleadings also.

In the common order, under revision in these two C.R.Ps, the Court below observed that the Suit was filed in the year 2003; issues were settled in the year 2004; since then the matter was coming up for trial; a written statement was filed in the Suit on 08.08.2003 wherein the respondents had stated that they had already constructed a wall in the disputed way; they had clearly mentioned in their written statement that the plaintiff had filed a wrong schedule; these applications were filed after the respondents had clearly mentioned in the written statement regarding the schedule and construction of the wall; this showed that the plaintiff was not diligent in prosecuting the Suit; if these amendments were allowed, it would change the nature of the Suit; and the applications were liable to be dismissed for inordinate delay.

Sri B.Somasekhar, Learned Counsel for the petitioner, would place before this Court the docket proceedings of the Suit, in support of his

submission that trial has not commenced even till date. He would submit that a pre-trial amendment to the pleadings was necessitated because of the plea, in the written statement, that a wall had already been constructed in the disputed area even prior to the filing of the Suit.

The application in I.A.No.1035 of 2009 was filed, under Order 6 Rule 17 CPC, seeking amendment of the plaint. The said provision, which permits amendment of pleadings, makes a distinction between pre-trial amendment, and those sought after trial has commenced. While the said provision confers power on the Court, at any stage of the proceedings, to allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and for all such amendments to be made as may be necessary for the purpose of determining the real questions in controversy between the parties, the proviso restricts the exercise of power only on the Court recording its conclusion that, inspite of due diligence, the party could not have raised the matter before commencement of trial.

While Sri B.Somasekhar, Learned Counsel for the petitioner, would assert that trial has not commenced even as on date, the common order of the Court below merely refers to the matter coming up for trial, and does not specifically record that trial had already commenced by the time the applications, for amendment of the plaint, were filed.

While the Court below was concerned with a Suit filed in the year 2003, and the matter has been pending on its file for more than a decade, it is indeed disconcerting to note that trial has not commenced for a period of nearly 13 years after the Suit was filed. The fact, however, remains that, if trial has not commenced in the Suit, the Court below is not fettered by the due diligence requirement, under the proviso to Order VI Rule 17 CPC, for permitting such amendments as may be just and necessary.

The case of the petitioner is that the wall was constructed by the defendants after the status-quo order was passed; and they had, therefore, sought amendment of the prayer to include the relief of mandatory injunction for demolition of the wall. Whether the wall was constructed prior to the filing of the Suit, or thereafter, are again matters to be examined after trial. That does not however justify refusal, by the Court below, to grant permission to amend the plaint.

Both the orders under revision are set aside. The petitioner is permitted to amend the pleadings as sought for. Needless to state that, on a copy of the amended plaint being filed, the respondents herein shall also be given an opportunity of filing an amended written statement, if they so choose and the Court below shall thereafter decide the Suit, in accordance with law, with utmost expedition.

Both the Civil Revision Petitions are, accordingly, disposed of. The Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, J)

Date:07.04.2016.

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