

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2710 OF 2010

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 02.06.2010 of the learned I Additional Junior Civil Judge, Machilipatnam, in I.A.No.881 of 2008 in O.S.No.605 of 2005. The petitioner is the plaintiff in the said suit and she filed the subject I.A. under Order 6 Rule 17 CPC seeking to amend her plaint and also the plaint schedule. By the order under revision, the trial Court dismissed the application.

By order dated 16.07.2010, this Court granted interim stay of all further proceedings in the suit and the same was extended on 09.09.2010 until further orders. Despite service of notice, the respondents-defendants did not choose to enter appearance before this Court either in person or through learned counsel.

The petitioner-plaintiff filed the suit for declaration of her title over an extent of land and for recovery of possession thereof. According to her, after the institution of the suit, the respondents-defendants encroached into the entire extent of her property and constructed a shed therein. She therefore sought leave to amend the plaint schedule by increasing the extent of land from 30.66 square yards to 100 square yards and to carry out corresponding amendments in her plaint pleadings and her suit claim.

Perusal of the order passed by the trial Court reflects that the only ground for rejection of the amendment sought was that there was delay on the part of the petitioner-plaintiff in seeking such amendment. The trial Court therefore opined that the I.A. had been filed only to drag on the proceedings and to delay the matter further. The trial Court also observed that allowing such an amendment would give rise to a new cause of action. Basing on these grounds, the trial Court dismissed the application.

Though it is no doubt true that no attempt was made by the

petitioner-plaintiff to put-forth an explanation to account for the delay on her part, it is to be noted that according to her the alleged encroachment by the respondents-defendants took place while she was absent from the town. The issue raised in the suit was the alleged encroachment over a smaller extent which, according to the petitioner-plaintiff, increased after the institution of the suit. There was no new dimension, as such, being added to the case. That apart, as pointed out by the trial Court, this new cause of action, if it is to be addressed separately, would lead to multiplicity of proceedings. As the trial Court is already seized of the issue as to whether the petitioner-plaintiff was entitled to a declaration in relation to the lesser extent of 30.66 square yards and to the possession thereof, mere increase of the area in the context of the alleged encroachment made after the institution of the suit does not actually change the nature of the suit. The trial Court ought to have been mindful of this aspect instead of adopting a technical approach.

The order passed by the trial Court is accordingly set aside and the amendment petition filed by the petitioner-plaintiff is allowed.

The Civil Revision Petition is allowed. Interim order dated 16.07.2010 is vacated. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

31st MARCH, 2016

PGS