

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No.3675 of 2015

DATE 20-01-2016

ORDER:

The petitioners are plaintiffs in O.S.No.92 of 2012 on the file of the III Additional Chief Judge, City Civil Court at Hyderabad. The suit was filed for declaration by declaring the ex parte decree in O.S.No.1476 of 1997 on the file of the 1st Senior Civil Judge, City Civil Court, Hyderabad as not valid, binding and unenforceable against the plaintiffs.

A written statement was filed by the defendants and issues were also framed. At that stage, the plaintiffs filed I.A.No.1928 of 2015 seeking amendment of plaint by adding paragraph 14(b) after paragraph 14(a). The said application of the petitioners was opposed by the respondents by filing a detailed counter. Ultimately, the said application was dismissed on the ground that the proposed amendment would change the very nature of the suit. The said order dated 14.08.2015 is under challenge in the present revision petition.

The proposed amendment reads as follows:

“It is submitted that, since the earlier suit in O.S.No.1476 of 1997 is not maintainable in view of deletion of Section 82 of Indian Trust Act, the subsequent judgment and decree dated 21.11.2007 passed in O.S.No.259 of 1999 on the file of IX Additional Senior Civil Judge, City Civil Court at Hyderabad is also hit by Order 2 Rule 2 of C.P.C. Adding to this, the collusive transaction between the defendant Nos.1 & 3 who are husband and wife is benami transaction which is hit by Benami Transaction Act 1987 which is prohibited. Further, since the defendant Nos.1 & 3 are admittedly husband and wife and their relationship still subsists, then the Defendant No.1 was under obligation to file the said nature of suit before the Family Court and Family Court is having jurisdiction under Family Courts Act 1984 to decide the property disputes between the husband and wife, whether their relationship subsist or even divorced. As such the said judgments and

decrees obtained by the defendant No.1 against the defendant No.3 in O.S.No.1476 of 1997 and O.S.No.259 of 1999 and also against her purchasers are not sustainable and per-incurium since the said Courts are not having jurisdiction to pass such judgments and decrees in view of the bar under Family Courts Act, 1984.”

The plaintiffs did not ask for change of relief. They wanted to lay a foundation for evidence in support of the relief sought in the suit for declaration and for cancellation of decree in O.S.No.1476 of 1997. Before filing the present suit there was a prior litigation in respect of the same subject matter. The petitioners are not parties to O.S.No.1476 of 1997 and O.S.No.259 of 1999. They are purchasers of the property and as purchasers of the property they wanted to have a clear title, and hence they challenged the decrees passed in O.S.No.1476 of 1997 and O.S.No.259 of 1999 and the suit itself is filed for the said relief.

Admittedly, even before leading the evidence in support of the plea, the proposed amendment is sought by the plaintiffs. It is not understandable how it can be termed as changing the nature of the suit. It is no doubt true that the plaintiffs might have sought for amendment of pleadings in the year 2011, and there was delay in filing the present amendment application. But the trial of the suit is not yet commenced and the proposed amendment is within the purview of the original relief.

Learned counsel for the respondent submits that the plaintiffs are dragging the matter on one pretext or the other. Even though this Court directed the suit to be disposed of by the end of December 2015, the suit could not be taken up for trial at all. In view of the same, it is necessary for this Court to fix time limit once again for disposal of the suit.

In view of the nature of the amendment and non-commencement of trial of the suit, this court is inclined to allow I.A.No.1928 of 2015 keeping in view the fact that the amendment sought for by the plaintiff is within the purview of the original relief.

Accordingly, the Civil Revision Petition is allowed by setting aside the order in I.A.No.1928 of 2015 and allowing the said application for amendment. The plaintiffs shall file amended copy of the plaint before the trial Court within a period of 15 days from the date of receipt of a copy of this order, and if necessary, the lower Court shall redraft the issues on the basis of the amended pleadings, by giving due opportunity to the respondents to file additional written statement, if any. The entire exercise shall be completed on or before 29th March, 2016. Since the parties are represented by their counsel, the respective counsel are requested to cooperate for the trial and disposal of the suit. In view of the pendency of the suit for a long time, the lower Court shall endeavour to dispose of the suit as expeditiously as possible not later than 31st December, 2016.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A. RAMALINGESWARA RAO, J.

20th January, 2016
Js.