

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.3551 OF 2016

ORDER:

This Revision filed by the defendant in O.S.No.231 of 2010 on the file of the Court of the Principal Senior Civil Judge, Anathapuramu, challenges the order dated 07.04.2016 passed by the said Court, dismissing I.A.No.158 of 2015.

2. Heard Sri M.Karibasaiah, learned counsel, appearing for the petitioner and Sri I.Venkata Prasad, learned counsel, appearing for the respondent, apart from perusing the material available before the Court.

3. The respondent herein instituted the suit for declaration and possession. The suit schedule property is a house property. The defendant/petitioner herein filed a written statement resisting the said suit. When the matter was coming up for cross examination of P.W.1/respondent herein, defendant/petitioner filed the present application under the provisions of Order 6 Rule 17 of the CPC, seeking amendment of the written statement. Resisting the said application, plaintiff filed a counter. The learned Senior Civil Judge, by way of an order dated 07.04.2016, dismissed the said application for amendment. The said order is under challenge in the present revision.

4. It is contended by the learned counsel that the order passed by the learned Senior Civil Judge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 6 Rule 17 of the CPC. It is the further submission of the learned counsel that by way of the proposed amendment, the defendant seeks permission of the Court to raise the plea of adverse possession. It is the further submission of the learned counsel that the learned Judge ought to have allowed the application as the same would not cause any prejudice to the other side.

5. On the contrary, it is contended by the learned counsel for the plaintiff/defendant that in the absence of any illegality or infirmity, the impugned order is not amenable for any judicial review under Article 227 of the Constitution of India. It is the further submission of the learned counsel that having taken the plea of adverse possession in the written statement filed earlier, now it is not open for the petitioner to file the present application for amendment. It is the further submission of the learned counsel that the present application is only an attempt to drag on the proceedings to the extent possible. It is also the submission of the learned counsel that in view of the proviso to Order 6 Rule 17 of the CPC, after commencement of the trial, the defendant herein cannot maintain the present application.

6. In the above background, the question that arises for consideration of this Court is:

“Whether the impugned order is sustainable and tenable or whether the same warrants any interference of this Court under Article 227 of the Constitution of India?

7. There is absolutely no dispute with regard to the reality that at the time of cross examination of P.W.1, the present application was filed by the defendant for amendment of the written statement. According to the proviso to Order 6 Rule 17 of the CPC, application for amendment for pleading is not maintainable after commencement of the trial, unless the party applying for is able to demonstrate before the Court that such application could not be filed earlier despite due diligence. In the present case, such contingency of due diligence is conspicuously absent.

8. Another significant aspect which needs examination at this juncture is that the defendant in the written statement filed on 05.06.2011 categorically has taken the plea of adverse possession. In fact, the learned Senior Civil Judge by observing the same dismissed the application, while further observing that the present application is an attempt to protract the litigation.

9. Having regard to the reasons recorded by the learned Senior Civil Judge, this Court does not see any valid reason to

meddle with the order impugned. Accordingly, Civil Revision Petition is dismissed.

10. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

02.09.2016
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