

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL REVISION PETITION No.5180 of 2015

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ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/plaintiff is directed against the orders dated 02.11.2015 of the learned Additional Senior Civil Judge, Tirupati passed in I.A.No.1372 of 2014 in O.S.No.20 of 2003 filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 read with Rule 28 of the Civil Rules of Practice requesting for permission to amend the plaint as stated in the affidavit and in the petition list.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('plaintiff', for brevity) and the learned Standing Counsel for the 18th respondent/18th defendant ('18th defendant', for brevity). The respondents 4, 5, 7, 8, 9 and 14 are stated to be not necessary parties, as they had remained *ex parte* in the proceedings before the Court below. Though the other respondents are served, none appears on their behalf. I have perused the material record.

3. To begin with, the facts of the case, in brief, are as follows:-

The sole plaintiff brought the suit against the defendants for specific performance of the agreements of sale dated 29.07.1991 and 01.12.1992 said to have been executed by the late husband of the 1st defendant. During the pendency of the suit, the 18th defendant was impleaded as a party as per the orders dated 23.01.2014 in I.A.No.393 of 2013 of the Court below. Subsequently, the 18th defendant had filed a written statement. During the pendency of the suit, the plaintiff had filed the aforementioned application for amendment of the plaint to enable him to seek the relief of recovery of possession of the plaint schedule property. The said application was resisted by some of the contesting respondents/defendants. On merits, and by the order impugned, the Court below dismissed the application. Therefore, the plaintiff is before this Court.

4. The case of the plaintiff in support of his request for amendment of plaint, in brief, is this: "The plaintiff is in possession of the plaint schedule property by virtue of the suit agreements of sale. However, the defendants dispossessed the plaintiff from the plaint schedule property on 20.03.2003, i.e., after the filing the suit and had encroached upon the plaint schedule property. In view of the said dispossession, proceedings were initiated by the Executive Magistrate – cum – Mandal Revenue Officer, Tirupati Rural Mandal under Section 145 of the Criminal Procedure Code, 1973. In the said circumstances, the plaintiff is entitled to seek recovery of possession also in addition to the relief of specific performance. Therefore, the instant petition is filed for amendment of the plaint."

5. The defence of the contesting respondents, as stated in the counter of the 13th defendant, in brief, is this: "The material allegations in the plaint and the affidavit filed in support of the petition are false. The averment that the plaintiff was dispossessed by the defendants on 20.03.2003 is also false. The defendants are contesting that said Rama Rao never executed any agreement of sale in favour of the plaintiff. The agreements of sale allegedly are of the year 1991 and 1992 and the suit is filed in the year 2003. By the date of institution of the suit, the 12th defendant had constructed a pucca building in a part of the plaint schedule property to the knowledge of the plaintiff. The plaintiff ought to have filed a suit for delivery of possession at the inception. Now the suit is part heard and PWs 1 to 4 were examined; and, the suit is at the stage of closure of evidence on the side of the plaintiff. The amendment of plaint is being sought at a belated stage. Therefore, the petition is liable to be dismissed."

6. The 12th defendant had filed a memo adopting the counter of the 13th defendant.

7. At the hearing, the learned counsel for the plaintiff would submit as follows: "The suit is filed for specific performance. The relief of recovery of possession is not claimed at the inception, as the plaintiff is in absolute possession of the plaint schedule property as on the date of the suit. It has

become necessary for the plaintiff to seek amendment of the plaint in view of the subsequent event of dispossession as stated in the case of the plaintiff. The Court below had erroneously, by a cryptic order, and without assigning any reasons, much less valid reasons, dismissed the petition of the plaintiff. In view of the provision of Section 22 of the Specific Relief Act, 1963 the plaintiff is entitled to seek the relief of recovery of possession in a suit for specific performance by seeking amendment of the plaint at any stage of the suit. Therefore, under facts and in law, the plaintiff is entitled to the relief of recovery of possession. The order of the Court below is unsustainable and is liable to be set aside.”

8. *Per contra*, the learned Standing Counsel for the 18th defendant, while drawing the attention of this Court to the written statement of the 18th defendant, would submit as follows: “The 18th defendant is only concerned with the land purchased by it under a registered sale deed dated 20.04.2013 viz., lands bearing paimash nos. 3 and 10 co-relating to Sy. nos.230, 240, 241 and 242 of Tiruchanoor and it is not concerned with the plaint schedule property. Since the suit land is a Government land, the Government are a necessary party to the suit. In the absence of the Government as a party to the suit, the suit itself is not maintainable and therefore, the question of the plaintiff seeking permission to amend the plaint does not arise for consideration.”

9. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

10. The law is well settled that the question whether the plaintiff would be entitled or not to the proposed relief of recovery of possession now being introduced by way of proposed amendment cannot be prejudged while considering an application, which is filed for seeking the amendment of the plaint. Coming to the facts of the case which are relevant, the suit is admittedly filed for specific performance. The plaintiff, alleging that on account of his dispossession from the plaint schedule property, which is a subsequent event, is seeking amendment of the plaint to enable him to

recover possession of the plaint schedule property. Apart from the proposed relief, the events which necessitated him to seek amendment of the plaint and consequential amendments are also stated in the affidavit filed in support of the petition and also in the proposed amendment.

10.1 The vital question is as to whether the plaintiff, at this stage, when the suit is part heard, can be permitted to seek the amendment of the plaint to enable the plaintiff to claim the relief of recovery of possession also. This question need not detain this Court any longer in view of the provision of Section 22 of the Specific Relief Act, which reads as under:-

Power to grant relief for possession, partition, refund of earnest money, etc.—

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 1[made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.

A plain reading of the above provision would show that a person suing for specific performance of a contract for the transfer of immovable property may ask for possession and that in a given case, where the plaintiff has not claimed any such relief of possession in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief. However, the Court below without noticing the legal position applicable to the case on hand had dismissed the petition on the erroneous ground that granting of amendment

of the plaint is not just and proper as the trial is at the stage of closure of the evidence on the side of the defendants.

10.2 Further, the law is well settled that any amendment which is necessary for complete adjudication of all the disputes between the parties and which is required to set at rest the controversies once and for all, shall be permitted. Having regard to the legal position obtaining and the facts, this Court is of the considered view that it is a fit case to grant permission to the plaintiff to amend the plaint.

10.3 Viewed thus, this Court finds that the order impugned is unsustainable and is liable to be set aside.

11. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. Consequently, I.A.No.1372 of 2014 in O.S.No.20 of 2003 on the file of the Court below is allowed permitting the plaintiff to amend the plaint as prayed for. The Court below shall permit the plaintiff to amend the plaint and file a neat copy and pay the necessary Court fee, if any, payable. It is needless to state that after such a neat copy of the plaint is filed, the Court below shall give an opportunity to the contesting defendants to file additional written statements to answer the averments in the amended plaint.

There shall be no order as to costs.

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

M.Seetharama Murti, J

09th June, 2016
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