

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.4269 of 2016

Date: 09.09.2016

Between:

Polavarapu Ganga Babu

.. Petitioner

and

Rayapureddy Appalanaidu and 2 others

.. Respondents

Counsel for the petitioner : Mr.TV.Sridevi

The Court made the following:



Order:

This Civil Revision Petition arises out of Order, dated 06-08-2016, in IA.No.372 of 2016 in OS.No.87 of 2012, on the file of the Principal Junior Civil Judge, Chodavaram, whereby he has allowed respondent No.1- plaintiff to amend the plaint by replacing the date “24-06-2012 (Sunday)” with “26-12-2016 (Friday)”.

I have heard Smt.T.V.Sridevi, learned Counsel for the petitioner, and perused the record.

Respondent No.1 has filed the afore-mentioned suit for permanent injunction against the petitioner.

In Paragraph III (c) of the plaint, respondent No.1 has averred that on 22-06-2012 (Sunday) at about 10.00 am., when he was doing agriculture work in the plaint schedule land, the petitioner and respondent Nos.2 and 3, who are arrayed as defendants, trespassed into the same, removed the cement poles planted thereon and tried to dispossess him therefrom.

The petitioner has filed a written statement wherein he has denied having ever interfered with the alleged possession of respondent No.1. He has further pleaded that having purchased the suit schedule land from the father of respondent No.1- plaintiff, he is in possession of the same and that therefore, the question of his interference does not arise.

Respondent No.1 has filed the afore-mentioned IA for amendment of the said averment by substituting the date “24-06-2012 (Sunday)” with “26-12-2016 (Friday)”. This Application was allowed by the lower Court.

The learned Counsel for the petitioner forcefully submitted that once the trial is commenced, the Court is bound to be satisfied that *in spite* of due diligence shown by respondent No.1/plaintiff, he could not seek amendment before commencement of trial; that in the affidavit filed in support of the Application, no such averment has been made; and that the Court below also failed to render any finding on this aspect.

Undoubtedly, once the trial is commenced, the discretion of the Court to amend the pleadings is restricted under the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) and unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial, the same cannot be allowed.

In my opinion, unless the petitioner suffered prejudice on account of the amendment, the discretion exercised by the lower Court cannot be interfered with. Therefore, the question in the present case is, whether any prejudice is caused to the petitioner by the amendment. If I understand the pleadings of the parties in their right perspective, it is the pleaded case of respondent No.1 that the petitioner has interfered with his possession. This averment is denied by the petitioner. So, it hardly matters whether such interference was alleged by the plaintiff on 24-06-2012 or 26-06-2012. It is not as if the petitioner has been asserting that the alleged event has taken place on 24-06-2012 and not on 22-06-2012. On the contrary, it is the pleaded case of the petitioner that on neither of the aforesaid two dates, he has

caused interference. Therefore, by allowing the proposed amendment, the nature and character of the suit or its outcome would not be changed. Whether the alleged interference was made on 22-06-2012 or 24-06-2012, the burden still lies on the plaintiff to prove the same. Hence, in the absence of any prejudice to the petitioner, I am not inclined to interfere with the discretion exercised by the lower Court even without there being a finding by the lower Court that in spite of exercise of due diligence by respondent No.1- plaintiff, he could not seek amendment of the plaint earlier.

For the afore-mentioned reasons, the Civil Revision Petition fails and the same is, accordingly, dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.5564 of 2016, filed by the petitioner for interim relief, is disposed of as infructuous.

Dt: 9th September, 2016
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(C.V.Nagarjuna Reddy, J)

