

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 2872 of 2015

ORDER:

The petitioner is the plaintiff in O.S.No.09 of 2007 on the file of I Additional District Judge, Warangal. The said suit was filed for execution and registration of Sale Deed in favour of the plaintiff by selling away the suit schedule property and to receive the balance sale consideration before the Registering Authority or in the alternative, to refund the amount of Rs.32,00,000/- paid by him with interest thereon.

2. A written statement was filed on behalf of 5th defendant. After filing an affidavit in lieu of chief examination by the plaintiff, the plaintiff filed I.A.No.471 of 2015 seeking amendment of plaint for possession and also for payment of compensation for unauthorized demolition of the compound wall and other structures raised by him, consequent to his putting in possession.

3. A counter was filed by the 6th defendant stating that the Agreement of Sale dt. 18.3.2006 is not a fabricated and bogus document and, in fact, the compound wall was constructed by him between 19.09.2009 and 25.09.2009. It was also stated that defendant Nos. 1 to 5 stated that they are in possession of the land from 15.09.2006 and later on, they delivered the property to 6th defendant. It was also stated that there is enormous delay in filing the petition for amendment.

4. The application for amendment was ultimately dismissed by Order dt. 30.06.2015 on the grounds that the trial has already commenced by filing an affidavit in lieu of chief examination and the petitioner failed to prove the delay in filing the petition. In para No.17 it is stated as follows:

“ But, in this case, the suit is filed by the petitioner seeking specific performance and delivery of possession,

which is vehemently denied by the respondents. Therefore, in the said circumstances, I am of the opinion that the amendment sought by the petitioner cannot be permitted at this stage”.

Challenging the said Order dt. 30.06.2015, the present revision is filed.

5. Learned counsel for the petitioner submitted that application is filed pursuant to Section 22 of Specific Relief Act and the learned Senior Counsel appearing for the respondent Nos. 1 to 5 submits that no such application is needed in a suit for specific performance, in view of the law laid down in ***Babulal v. M/s Hazarilal Kishori Lal and others***^[1]. Hence, with regard to possession claimed by the petitioner, the amendment can be allowed. With regard to the relief sought for payment of damages for demolition of the structures, the defendants shall be given an opportunity to file additional Written Statement raising specific contentions and issues shall be recast, if necessary. In view of the same, I.A.No.471 of 2015 is allowed and the trial Court is directed to complete the process of pleadings within a period of two months from the date of receipt of a copy of this Order.

6. Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 25.01.2016

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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