

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No.3422 of 2016

ORDER:

Vide the present petition, the petitioners have assailed the order dated 02.01.2016 passed in I.A.No.575 of 2015 in O.S No.330 of 2013 on the file of III Additional District Judge, Guntur.

The respondents herein have filed the above I.A. No.575 of 2015 under Order VI Rule 17 and under Section 151 of CPC to permit them to amend the pleadings and to seek the relief of mandatory injunction for removal of structure in the suit property.

Learned counsel for the respondents contends that in the month of March 2013, when PW.2, visited the suit schedule property found the men of respondent No.2 therein, who informed him that they have purchased the suit property, from Vellvelli Saidulu on 7.11.2012. However, on knowing the same, PW.2 has filed suit for cancellation of registered sale deed dated 22.12.2012 and thereafter he also filed suit for permanent injunction to restrain the respondents from interfering with their possession over the suit property. He further contends that while preparing the suit, due to inadvertence, a small portion of concrete foundation with pillars were laid by respondent No.2 in the suit property, and for its removal, mandatory injunction was not sought. He further contended that in the evidence of PW.2, it came to light that there is a small portion of concrete portion in suit property laid by respondents No.2 and 3. Under the above circumstances, they are advised to amend the plaint and seek the appropriate reliefs.

The said application has been allowed vide order dated 02.01.2016.

Learned counsel for the petitioners submits that

respondents No.1 and 2 had knowledge of the concrete portion even prior to the filing of the suit and thus they ought to have pleaded in the plaint. He further submits that as per under Order VI Rule 17 proviso, this cannot be allowed which came to be amended in 2002. However, no application for amendment will be allowed after commencement of trial.

Learned counsel further submits that if the plaintiff succeeds in the suit, petitioners shall handover the possession of the same to the plaintiffs/respondents. However, if the petitioners succeed and the pillars are demolished, then there would be irreparable loss.

In the present case, learned trial court only allowed the amendment to be carried out, however, no final order is passed by directing the petitioners to remove the pillars.

As fairly stated by the learned counsel for the petitioners that if the plaintiffs/respondents succeed in the suit, they would vacate the same, but if the petitioners succeed, then the property will remain with them. Therefore, in both the situations, there would be no effect on the rights of the petitioners.

In view of the above, I find no discrepancy in the order dated 02.01.2016 passed in I.A.No.575 of 2015 in O.S No.330 of 2013 by the trial Court.

Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision petition shall stand dismissed.

JUSTICE SURESH KUMAR KAIT.

Date :21-07-2016
Gvl