

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.4183 of 2015
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ORDER:

This civil revision petitioner under Article 227 of the Constitution of India by the petitioner/26th defendant is directed against the orders dated 24.08.2015 of the learned VII Additional District Judge, Ranga Reddy District at L.B. Nagar passed in IA.no.1114 of 2015 in OS.no.115 of 2010 filed by the plaintiffs under Order VI Rule 17 of the Code of Civil Procedure, 1908 requesting to permit to amend the plaint by inserting the prayers as stated in the affidavit and the petition list.

2. I have heard the submissions of the learned senior counsel appearing for the revision petitioner/defendant no.26 and the learned counsel appearing for the respondents 1 to 7/plaintiffs ('the plaintiffs', for brevity). The respondents 8 to 32 are stated to be not necessary parties. I have perused the material record.

3. In view of the facts peculiar to the case, this revision petition need not detain this Court for long. Be it noted that the plaintiffs filed the suit for declaration of title and perpetual injunction. In that pending suit they had filed the aforementioned interlocutory application for amendment of the plaint *inter alia* contending as follows: 'The interlocutory application filed by the plaintiffs for grant of temporary injunction was dismissed by the trial Court. Against the said order, the plaintiffs had preferred a CMA before this Court. The said CMA.no.213 of 2015 is pending. No stay order is granted in the said CMA. Since the injunction petition not to proceed with the construction was dismissed, the defendants had taken possession of the suit schedule properties, though the same are in the possession of the plaintiffs at the time of filing of the suit, and had proceeded with the construction. In the circumstances it has become necessary to seek the amendment of the

plaint.’ Despite the defence resisting the application, the Court below by the order impugned had allowed the application of the plaintiffs. In fact, the aggrieved 26th defendant having filed this revision mainly contended that the application for amendment of the plaint filed by the plaintiffs, without showing the necessary incidental and consequential amendments like the circumstances which lead to the seeking of the proposed reliefs and the other required consequential pleadings in regard to the valuation of the properties and reliefs claimed and the court fee payable on the proposed reliefs etcetera, is not maintainable. The learned counsel appearing for the plaintiffs, while fairly conceding that there is a technical defect in the application seeking amendment, would submit that the said defect is curable and not material and that since this revision is filed under Article 227 of the Constitution of India, this Court can exercise its wide discretionary powers and sustain the order of the Court below by directing the plaintiffs to seek consequential amendments.

4. The two prayers, which are being sought to be incorporated in the plaint by way of the proposed amendment, as stated in the application filed for the amendment of the plaint, read as under:

“(i) to direct defendants to hand over the peaceful possession of the suit schedule properties to the plaintiffs from the defendants or any other person claiming on their behalf, if the defendants fails to deliver the possession to the plaintiff than this Hon’ble Court may be pleased to deliver the peaceful possession of the same to the plaintiffs.

(ii) to direct the defendants to remove any structure or any physical features over the suit schedule property, failing to do so the Hon’ble Court may be pleased to get it removed/demolish the structures over the suit schedule properties at the cost of the defendants and to put the plaintiffs into possession by the due process of law.”

[Reproduced verbatim]

Except the above two prayers, no other amendments are being sought for by way of the proposed amendment. Normally, when the plaintiffs, who had initially filed the suit for the reliefs of declaration of title and perpetual injunction are seeking further reliefs, including the relief of recovery of possession, by way of the proposed amendment, the plaintiffs are expected

to incorporate in the plaint an additional paragraph explaining the events that necessitated the plaintiffs to claim the additional reliefs by way of amendment of the plaint. Further, when the plaintiffs are proposing to convert the suit filed for the reliefs of declaration of title and perpetual injunction into one for recovery of possession and other reliefs by way of the proposed amendment, the plaintiffs are required to state in the application for amendment the required further pleadings in regard to the valuation of the property and the valuation of the reliefs being claimed by way of proposed amendment and the Court fee payable on the further reliefs etcetera. In other words, the plaintiffs, in their application filed for the amendment of the plaint ought not to have pleaded just the two proposed reliefs to be incorporated in the prayer portion of the plaint; but, they also ought to have pleaded all the other necessary proposed amendments, both incidental and consequential. Without stating in their application for amendment, the further proposed pleadings like the facts/events that necessitated the amendment of the plaint, the valuations of the property involved in the *lis* and the reliefs and the court fee payable on the reliefs being sought to be claimed by way of proposed amendment etcetera, the plaintiffs' application for amendment of the plaint by only mentioning the proposed reliefs to be incorporated in the prayer portion of the plaint is not maintainable and is liable for dismissal being defective. Thus, the application for amendment, which is filed showing barely the proposed reliefs to be incorporated by way of amendment without showing other necessary proposed pleadings, both incidental and consequential, is liable for dismissal. Further, under Rule 28 of the Civil Rules of Practice, an application for amendment shall also contain a prayer for all consequential amendments and the Presiding Officer shall reject the application if it is not in accordance with the law. In the well considered view of this Court, the present application of the plaintiffs filed for amendment by only showing the proposed reliefs without showing any other required incidental and consequential proposed pleadings to be incorporated in the plaint by way of amendment is not maintainable.

5. Viewed thus, this Court finds that the order impugned brooks interference.

6. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA no. 1114 of 2015 in OS.no.115 of 2010 stands dismissed. However, since the application is dismissed not on merits but on the ground that it is defective, the plaintiffs are given liberty to file a fresh application for the same relief showing all the necessary proposed amendments, including incidental and consequential amendments.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

9th June, 2016
Vjl