

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 4685 OF 2016

ORDER :

Aggrieved by the order dated 25.07.2016 which allowed I.A. No. 811 of 2014 filed by the respondent/plaintiff seeking amendment of the plaint in O.S.No. 608 of 2010 on the file of the I Additional Senior Civil Judge's Court at Nellore, this Revision has been preferred.

The above-said suit was filed by the respondent/plaintiff seeking delivery of possession of the plaint schedule property, mandatory injunction directing the petitioners/defendants to remove the unauthorized constructions made thereon and also permanent injunction restraining the defendants from interfering with his peaceful possession over the suit schedule property. Trial in the suit commenced in 2011. At that stage, the respondent has come up with the present I.A.No. 811 of 2014 seeking amendment to the effect that he be declared as the absolute owner of the plaint schedule property. According to the respondent/plaintiff, the amendment has become necessary on account of the stand taken by the petitioners in their written statement that the survey number of the plaint schedule property is different from that of the survey number of their property. It is his further case that rectification deeds have been executed between his vendors and himself with regard to Survey No.344 which was substituted by Survey No. 372/1.

The said Application was opposed by the petitioners stating that they have purchased an extent of 25 Ankanams in Survey No. 371/1 from one Sk. Kareemunnisa and that the survey number of

the plaint schedule property is different from that of the survey number of their property. However, the learned I Additional Senior Civil Judge allowed the said Application *vide* order under Revision, on the ground that it is desirable to amend the plaint in the context of the petitioners/defendants denying the very title of the respondent/plaintiff. Hence, this Revision.

Learned counsel for the petitioners would submit that the respondent ought to have taken these steps the moment the petitioners have pleaded in their written statement that the survey number mentioned in the plaint schedule property is no way connected to them. The learned counsel further submits that by way of this amendment, the respondent is trying to raise altogether a new cause of action, which is not at all permissible at this stage. He would also submit that in terms of the law laid down by the Supreme Court in ***Revajeetu Builders & Developers v. Narayanaswamy & sons***¹, the amendments shall be allowed only when the Court comes to the conclusion that in spite of due diligence, a party could not take the plea at the time of filing the suit.

On the other hand, *Sri P. Gangi Rami Reddy*, learned counsel for the respondent/plaintiff, at the outset, takes advantage of the agitation that took place for setting up a separate High Court in Andhra Pradesh, to contend that the delay, if at all, that occurred, was due to the agitation. He supports the order under Revision and points out that it is only on 25.07.2013, the documents were rectified, which necessitated seeking the relief of declaration, at a later point of time.

¹ (2009) 10 SCC 84

Having considered the respective submissions and taking judicial note of the agitation and virtual non-functioning of the subordinate judiciary, this Court is of the opinion that it cannot be said that there was delay in moving the Application. It may also be noted that issues were framed and one of the issues that was required to be considered is 'the relief of recovery of possession of property'. For deciding that issue, it is necessary to consider the title first. The amendment, which is sought, is only in relation to adding the relief of declaration. In those circumstances and to avoid multiplicity of proceedings, the amendment that was ordered by the Court below cannot be found fault with. Hence, this Court is of the opinion that the order under Revision need no interference at the hands of this Court in exercise of the revisional jurisdiction.

With this, the Civil Revision Petition stands dismissed.

It is, however, needless to mention that the petitioners/defendants are at liberty to file an additional written statement putting-forth their case with regard to the relief of declaration of title only. No costs.

Consequently, the miscellaneous Applications, if any shall also stand dismissed.

CHALLA KODANDA RAM, J

05th December 2016

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