

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.2183 of 2015

ORDER :

The revision petitioners are defendant Nos.1 and 2 in O.S.No.390 of 2006 on the file of the Junior Civil Judge, Ibrahimpatan of Ranga Reddy District. The suit is filed by the sole plaintiff for the relief of cancellation of the sale transaction viz., to declare the registered sale deed No.573/89 dated 24.02.1989 and registered sale deed No.7050/2006 dated 19.05.2006 as null and void and not binding on plaintiff and to direct the defendants to vacate and hand over the physical possession of the property covered by the sale deeds, which is subject matter of suit of total extent of Ac.1.17 ½ gts. of Nakkartha Village, Yacharam Mandal, R.R.District and for other reliefs. Defendant No.1 filed his written statement on 25.04.2007 in opposing the suit claim with the contentions that he is the absolute owner, got title and right and he is in possession since the sale deed dated 24.02.1989 and obtained pattadar pass book vide proceedings No.B/213/1996 dated 06.06.1996 and in enjoying his own right. While he is in continuous possession and enjoyment in own right, alienated the same in favour of defendant No.2 under registered sale deed dated 19.05.2006. Therefore, the plaintiff has no right to seek the relief and suit is liable to be dismissed.

2. After framing of issues in the suit and while coming for trial, on 05.06.2013 an application covered by the impugned order dated 16.09.2013 was filed seeking to amend the written statement invoking

Order VI Rule 17 C.P.C. to incorporate in the written statement, which is as follows:

“The Defendant No.1 has also perfected his ownership by way of Adverse Possession and thereby he sold away the suit schedule property along with his other lands in favour of Defendant No.2 and she is in exclusive possession of said land since the date of purchase of the same.”

3. It is necessary to mention that on that day itself the plaintiff filed her chief-examination affidavit and the respective dates are very clear from perusal of the record and the said chief-examination affidavit of plaintiff as PW.1 was taken on oath. In opposing the petition by the plaintiff as respondent sought time and later counter filed saying the claim to introduce the new plea of perfect title by adverse possession is impermissible and the suit is of the year 2006 and that the defendants have filed the written statement later and after framing of issues. Since trial commenced from filing of the chief-examination affidavit, there are no grounds to seek such an amendment, much less to permit and by accepting the said contest and by holding that the rigor of the proviso to Order VI Rule 17 C.P.C. of due diligence after commencement of trial not satisfied to introduce the plea, praying the lower Court to dismiss the petition.

4. The contentions in the grounds of revision vis-à-vis the oral submissions of the learned counsel for revision petitioners is that the trial Court did not advert to the facts and did not apply its mind to the

requirement of factum of plea raised in the written statement that enjoying the property by virtue of sale deed by defendant No.1/revision petitioner No.1 herein with right possession and obtained pattadar pass book and by entering the same in the revenue records and subsequently alienated to defendant No.2 and put her in possession and she is also enjoying absolutely and to clarify the said fact filed to amend the written statement to introduce the additional factum of the perfect title by adverse possession, but the trial Court without considering the same, dismissed the application.

5. The respondent-plaintiff even served failed to attend, hence taken as heard.

6. Perused the material on record.

7. From the facts supra, the amendment sought in the written statement is filed on 05.06.2013 and on that day itself the plaintiff filed her chief-examination affidavit on oath and issued notice to the other side. The due diligence provided by the proviso to Order VI Rule 17 amended C.P.C. requires only after commencement of trial. It is clear from the facts, by the time of filing of amendment application, chief-examination affidavit was not even filed, much less taken on oath. Once that is the case, there is no commencement of trial and therefore nothing prevents the trial Court to consider the application from the above said proviso. Leave about the amendment apart from defendants are entitled to take even an inconsistent plea. Thereby, the impugned order is unsustainable and is liable to be set aside.

8. With the above observation, the revision is allowed setting aside the order dated 16.09.2013 in I.A.No.269 of 2013 by permitting the revision petitioners to amend the written statement as sought.

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

27th September 2016.

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