

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION NO. 1871 OF 2016

ORDER :

1) Aggrieved by an order, dated 04.03.2016 passed in I.A.No.109 of 2016 in O.S.No.260 of 2008 on the file of the Principal Junior Civil Judge, Tirupati, wherein an application filed under Order VI Rule 17 read with Section 151 of C.P.C. and Rule 28 of Civil Rules of Practice praying the Court to amend the plaint along with consequential amendment in the suit was rejected, the present Civil Revision Petition is filed.

2) The petitioners herein filed O.S.No.260 of 2008 seeking permanent injunction against the respondents. The respondents herein denied the title of the petitioners in respect of suit schedule property by filing written statement and documents. Since the respondents denied their title, the petitioners herein filed a petition seeking amendment of plaint for the relief of declaration of right and title of the petitioners over the plaint schedule property. It is stated in the petition that the proposed amendment will not change the nature of suit and the cause of action and that no prejudice would be caused to the respondents.

3) Second respondent filed counter stating that earlier the petitioners herein filed a petition to re-open the suit, which was dismissed on 22.01.2016. It is also stated that the proposed amendment seeking declaration of title will change the entire nature of suit which requires fresh trial with fresh issues. It is also stated

that as per the amendment to C.P.C., the proposed amendment is not permissible unless the Court comes to a conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. It is urged that the present petition is filed only to drag on the proceedings and hence prayed to dismiss the petition. After considering the rival submissions, the trial Court dismissed the said petition. Challenging the same, the present Civil Revision Petition is filed.

4) In order to appreciate the rival arguments it would be necessary to refer to proviso to Order VI Rule 17 of C.P.C. which reads as under:

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

5) As seen from the record the respondents herein filed written statement on 17.11.2008 denying the title of the petitioners and in the cross examination of PW.1 also the respondents denied the right and title of the petitioners over the plaint schedule property. Admittedly, the suit is posted for arguments. The petitioners have not taken any steps for amendment of the plaint for the relief of declaration of right and title at an earliest point of time.

6) Learned counsel for the petitioners relied upon the judgment of this Court in *P.Durga Reddy and another v. B.Yadi Reddy*¹. It was a case where the suit filed for specific performance of agreement of sale. The petitioners, who are plaintiffs filed a petition seeking

¹ (2016) 2 ALT 63

permission to interchange the boundaries on northern and southern side stating that there was a typographic mistake in the schedule. Having regard to the facts and circumstances of the case the trial Court dismissed the application. Challenging the same, a revision was preferred before this Court. This Court allowed the said revision. The said judgment may not apply to the case on hand as in the said case the nature of suit was not changed and the amendment sought for was only with regard to interchange of boundaries on northern and southern side only.

7) In *P.A.Jayalakshmi v. H.Saradha and others*², while dealing with the issue under Order VI Rule 17 of C.P.C. the Apex Court held that it is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI Rule 17 of C.P.C. restricts the power of the Court. It puts an embargo on exercise of its jurisdiction. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint.

8) As per the proviso to Order VI Rule 17 of C.P.C. no amendment can be permitted by the Court after the trial has commenced, unless the Court comes to a conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. In the instant case no explanation is forth coming as to why the petitioners came to the Court at the belated stage ie. Nearly eight

² (2009) 14 SCC 525

years after denial of their title. Apart from that originally the suit was filed for permanent injunction and now the amendment sought for declaration of right and title of the petitioners over the property, which alters the nature of the suit itself. Hence, the argument of the learned counsel for the respondents that if the said application is allowed, the nature of suit gets changed and that it requires fresh issues and trial cannot brushed aside.

9) In view of the proviso to Order VI Rule 17 of C.P.C. and in view of the judgment referred to above, I do not find any illegality or irregularity in the order passed by the trial Court.

10) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

31.08.2016
gkv

