

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.491 of 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Additional Senior Civil Judge, Gajuwaka, Visakhapatnam District in I.A.No.233 of 2014 in O.S.No.193 of 2011 dated 07.12.2015.

The petitioner herein is the fourth defendant, and the first respondent herein is the plaintiff, in the Suit. The first respondent filed I.A.No.233 of 2014, under Order 6 Rule 17 CPC, for amendment of the plaint whereby a declaration was sought for the gift deed dated 25.09.2006 to be declared null and void. By the order under revision, the Court below observed that Issue No.1, framed on 13.11.2013, would directly touch that aspect; permitting the petitioner to amend the plaint with the proposed amendments did not amount to final adjudication; and, in case the plaint was not permitted to be amended and the relief sought declined, the suit for partition cannot be adjudicated effectively. The Court below allowed the petition with a direction to the petitioner to carry out the proposed amendment within 14 days.

Before this Court, Sri M.Sudarshan, Learned Counsel for the petitioner, would submit that the proposed amendment would result in changing the nature of the Suit itself; a written statement had already been filed; and, after a written statement had been filed, the Court below ought not to have permitted the petitioner to amend the plaint.

Order 6 Rule 17 CPC reads thus:

17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

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."

In cases where trial has commenced, the proviso to Order 6 Rule 17 CPC restricts the power of the Court in allowing an application for amendment, and requires it to satisfy itself that, inspite of due diligence,

the party could not raise the matter before commencement of trial. The due diligence test is prescribed only for amendment of the pleadings subsequent to the commencement of the trial. In the present case, the Court below has itself noted that the petition, for amendment of the plaint, was filed only after issues were framed and that trial had not yet commenced. At the pre-trial stage, Order 6 Rule 17 CPC empowers the Court to permit alteration or amendment of the pleadings in such manner, and on such terms, as are just, and if such amendments are necessary for the purpose of determining the real question in controversy between the parties. In the order under revision, the Court below has noted that the question, whether the suit schedule property is liable for partition, depends upon the genuineness of the gift settlement deed dated 25.09.2006 relied upon by the plaintiffs and declining the relief sought for would result in an inability to adjudicate the partition suit effectively.

The jurisdiction, which this Court exercises under Article 227 of the Constitution of India, is supervisory and not appellate. Save patent illegality in the order under revision, no interference is called for. In passing the order under revision, the Court below cannot be said to have committed any patent illegality necessitating interference in proceedings under Article 227 of the Constitution of India.

The Civil Revision Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date:05.02.2016.

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