

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.3452 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India, by the unsuccessful plaintiff is directed against the orders dated 03.06.2016 of the learned Junior Civil Judge, Narayanpet, passed in I.A.No.54 of 2016 in O.S.No.77 of 2008 filed under Order VI Rule 17 of the Code of Civil Procedure, 1908, read with Rule 28 of the Civil Rules of Practice requesting to permit to amend the plaint as stated in the affidavit and petition list.

2. I have heard the submissions of the learned counsel for the petitioner/ plaintiff ('the plaintiff', for brevity) at the stage of admission. I have perused the material record.

3. The facts, which can be stated as a prelude to this order, in brief, are as follows:-

The plaintiff brought the suit against the defendants for perpetual injunction in respect of Acs.5.31 guntas of land in survey number 39 of Makthal village shivar of Makthal Mandal. The 3rd defendant filed a written statement and is resisting the suit. During the pendency of the suit, the plaintiff filed the subject application asserting that during the pendency of the suit, the defendants have illegally raised a compound wall and had occupied certain portion of the suit land and that on that, the plaintiff had issued a legal notice and that the defendants sent a litigious reply and that, therefore, the plaintiff is constrained to file the subject application for amendment of the plaint for adding paragraph 9(a) after paragraph 9 in the plaint. The said petition was also resisted by the defendants 3 to 5 by filing counter. By the order under revision, the trial Court had dismissed the said petition. Therefore, the present revision is filed by the plaintiff.

4. A perusal of the order of the Court below and on a consideration of the submissions made before this Court, would disclose that the plaintiff, by way of proposed amendment, sought the relief of mandatory injunction for removal of compound wall, but did not seek in the proposed amendment, the relief of recovery of possession, though in the supporting affidavit it is stated that the defendants had occupied a portion of the plaint schedule property during the pendency of the suit and constructed the compound wall and completed the construction.

5. The trial Court, having considered the said aspect of the matter, dismissed the petition for amendment by observing that the amendment seeking mere relief of mandatory injunction without seeking relief of recovery of possession, in the facts and circumstances of the case, will be of no avail and that therefore, the petition is liable for dismissal.

6. At the hearing, the learned counsel for the plaintiff would submit that in view of the defect in seeking the amendment of the plaint, the revision petition may be disposed of at the admission stage giving liberty to the plaintiff to file an appropriate application for amendment of the plaint by taking necessary pleas, which the law permits. Having regard to the facts and submissions, this Court is satisfied that the revision petition can be disposed of with appropriate directions.

7. In the result, the Civil Revision Petition is disposed of at the admission stage, confirming the orders of the Court below, however giving liberty to the revision petitioner/plaintiff to file a fresh application for amendment of the plaint with necessary and appropriate pleadings and reliefs, which the law permits. It is needless to state that in case any such application comes to be filed, the Court below shall give an opportunity to the defendants to file counter and then dispose of the said application in

strict accordance with the procedure established by law, uninfluenced by the observations, if any, made either in the order under revision or in the instant order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.

22nd July, 2016
Bvv

M.Seetharama Murthi, J

