

THE HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION Nos.2078 and 2097 of 2016

ORDER:

Heard Sri T.C.Krishnan, learned counsel for petitioner.

The plaintiffs in O.S.No.70 of 2015 in the Court of Principal Junior Civil Judge, Kovvur, are the revision petitioners. O.S.No.70 of 2015 is filed for the relief of perpetual injunction.

The respondent herein filed written statement and also counter in I.A.No.336 of 2015. The respondent thereafter filed I.A.Nos.66 and 67 of 2016 under Order VI Rule 17 CPC seeking amendment of few statements in written statement and counter, which are considered and treated as admissions by revision petitioners herein. To appreciate the case of revision petitioners, this court is of the view that the proposed amendments are extracted at this stage of narration. Paras '7' and '12' of written statement read thus:-

“The defendant humbly submits that the 1st plaintiff is one of the pattadar an extent of Ac.3-00 cents bearing Survey Nos.1304/1 an extent of Ac.00-60 cents and Survey No.1305/1 an extent of Ac.02-40 cents. This defendant further submits that the 2nd plaintiff also pattadar an extent of Ac.03-00 in Survey No.1306/2 which is the plaint schedule property.”

“This defendant further submits that he never constructed in any manner in regarding to the plaint schedule property.”

To the same effect is the averment in the counter filed by respondent in I.A.No.336 of 2015. The proposed amendment reads as follows:-

“delete “which is the plaint schedule property” mentioned in para No.7 from 4th line to 5th line after survey No.1306/2.

Delete the words of “the plaint schedule property” mentioned in para No.12 in 2nd line and add survey No.1306/2.”

The trial court through the orders impugned in the revision petitions allowed I.A.Nos.66 and 67 of 2016 and permitted respondent to carry out amendment. Hence, the revisions at the instance of plaintiffs.

Mr.T.C.Krishnan appearing for revision petitioners vehemently contends that the stand taken by the respondent either in the written statement or counter affidavit is not an unmindful statement by a respondent but a conscious admission made and through the proposed amendment if the admissions are allowed to be withdrawn, the revision petitioners herein will suffer irreparable loss and hardship. Further, he takes exception to the contradictory findings recorded by the trial court and prays for setting aside the orders impugned in the civil revision petitions.

I have perused the material available on record and taken note of the submissions of learned counsel for petitioners.

I am of the view that the applications filed by respondent are under Order VI Rule 17 only to delete a few of the statements not in line with the defence set up by the respondent in the written statement or in the counter filed in I.A.No.336 of 2015.

Learned counsel for petitioners though canvassed against the irregular approach adopted by the trial court, but did not bring to the notice of this Court that once an admission is made in pleading, the same is absolute and no effort by a party can be allowed either to explain the acted defence sought to be set up by a party. The effort of respondent herein is only to withdraw a few sentences either in the written statement or counter filed by him in I.A. to keep the pleading consistent. Further, the revision petitioner has to prove his case with documentary evidence and cannot take undue advantage of a stray sentence in the written statement/counter of respondent. With the mere withdrawal of admission in the considered view of this Court, the

revision petitioners are not suffering any loss or prejudice as sought to be projected by Mr.T.C.Krishnan. On the other hand, the revision petitioners being plaintiffs pray for perpetual injunction and they have to prove their case, establish boundaries for which they pray for protection of the Court either for temporary injunction or perpetual injunction. But not attempt to succeed on a single sentence in the written statement/counter.

Though I am not in agreement with a few observations of the trial court, having regard to the totality of circumstances, I see no reason to interfere with the discretion exercised by the trial court.

The Revisions fail and are accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:26-04-2016
Prv

THE HON'BLE SRI JUSTICE S.V.BHATT

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Dated 26-04-2016

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