

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.3332 of 2017

ORDER:

Heard the learned counsel for the petitioners, learned Government Pleader for Arbitration appearing for the respondent Nos.1 and 3 and Sri K.Lakshman, learned Assistant Solicitor General appearing for respondent Nos.2 and 4.

2. Petitioners have filed this Revision Petition assailing the order dt.06-01-2017 in I.A.No.151 of 2016 in O.S.No.542 of 2008 of the III Additional District Judge, Ranga Reddy District, L.B.Nagar, Hyderabad.

3. The petitioners are plaintiffs in the suit. They filed the suit for declaration that they are absolute owners of the plaint schedule property and for recovery of possession of the same and for costs on 13-06-2008. Subsequently they filed I.A.No.229 of 2011 in February 2011 to amend the plaint by raising the plea of adverse possession. The said application was dismissed on 29-07-2013.

4. Petitioners questioned the same in C.R.P.No.4898 of 2013 before this Court. On 28-10-2015, the said Revision Petition was withdrawn by the petitioners with liberty to take appropriate steps in the Court below. This Court therefore dismissed the said Revision granting them liberty as sought.

5. On 21-01-2016, petitioners then filed I.A.No.151 of 2016 again seeking amendment of the plaint by raising certain contentions with regard to events which occurred prior to the filing of the suit. It is pertinent to note that by the date the application was filed, matter was coming up for cross examination of P.Ws.2 and 3. Once the trial has commenced, the proviso to order VI Rule 17 does not permit amendments to be allowed unless it is established that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

6. By order dt.06-01-2017, the Court below dismissed the I.A.No.151 of 2016. It observed that petitioners did not explain what prompted them to withdraw C.R.P.No.4898 of 2013 in the High Court filed by them and why they did not file I.A.No.151 of 2016 immediately after dismissal of the said Revision Petition and filed the present application on 21-01-2016. It also observed that the relief now sought by the petitioners is inconsistent with the earlier pleas raised in the plaint and the relief sought in the plaint.

7. Assailing the same, this Civil Revision Petition is filed.

8. Learned counsel for the petitioners contended that there was no delay on the part of the petitioners in filing the application for amendment after C.R.P.No.4898 of 2013 was dismissed as withdrawn by the High Court, that liberty had been granted to the petitioners to take appropriate steps in the Court below and it cannot be said that I.A.No.151 of 2016 filed on 21-01-2016 is filed belatedly.

9. In this regard, it is important to note that the suit is filed in the year 2008 and issues were framed in the suit on 10-09-2009. The application I.A.No.229 of 2011 for amendment of the plaint was filed on 04-03-2011. That application was dismissed on 29-07-2013. Against the same, C.R.P.No.4898 of 2013 was filed before this Court.

10. No doubt there was a stay during the pendency of the Revision Petition for a short time till it was disposed of on 28-10-2015. Thereafter on 21-01-2016, I.A.No.151 of 2016 was filed.

11. Learned counsel for the petitioners states that there was no Presiding Officer posted in the Court below at that point of time and therefore application for amendment could not be filed immediately. The absence of the Presiding Officer, even if true, cannot prevent the party from filing the application in the Court since there would be an in-charge arrangement in his place. Admittedly, by the time the application was filed, the trial has already commenced and was coming up for cross examination of P.Ws.2 and 3. Once the trial has commenced, the proviso to the Order 6 Rule 17 CPC precludes the allowing applications for amendment of pleadings unless it is satisfied that in spite of due diligence, the party could not raise the matter before the commencement of trial.

12. In the light of the above factual scenario and taking notice of the fact that suit was filed in the year 2008 and the fact that I.A.No.151 of 2016 was filed after the trial had already commenced, it cannot be said that the petitioners had acted with due diligence.

13. Though the learned counsel for the petitioners contended that the Court below insisted for trial being proceeded with and was not inclined to take up I.A.No.151 of 2016, nothing prevented the petitioners from approaching this Court and seeking a direction to the Court below to decide the said I.A. first before commencing the trial. Obviously the petitioners did not seriously pursue I.A.No.151 of 2016 and by the time it came to be decided on 06-01-2017, the trial had progressed to a considerable extent. As of date, the trial stands concluded and the matter is posted for submission of arguments by parties.

14. Therefore, in the facts and circumstances of the case, I am of the opinion that the petitioners cannot be granted any relief in this Revision Petition and that there is no error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

15. Accordingly, the Civil Revision Petition is dismissed.
No costs.

16. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-11-2017
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