

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CIVIL REVISION PETITION NO.6304 OF 2016

ORDER:

This Civil Revision Petition is arising out of the order, dated 31.10.2016, passed in I.A.No.820 of 2014 in O.S.No.93 of 2013 by the Principal Junior Civil Judge at Vizianagaram (for short, trial Court).

2. The petitioners herein are the defendants and the respondents herein are the plaintiffs in O.S.No.93 of 2013. The plaintiffs filed the said suit for permanent injunction against the defendants. They also filed an interlocutory application in I.A.No.820 of 2014 under Order VI Rule 17 CPC seeking amendment of the plaint. The trial Court, on consideration of the material available on record and the arguments of both sides, has allowed the amendment of plaint to convert the suit from permanent injunction to declaration of title and for ejection of the defendants from plaint schedule property, after demolishing the unauthorized constructions alleged to have been made by the defendants, and for delivery of vacant possession.

3. Aggrieved by the said order of the trial Court, the revision petitioners have preferred this revision.

4. Heard the arguments of learned counsel for the revision petitioners Sri Venkateswara Rao Gudapati and learned counsel for the respondents Sri G.Sunderesan.

5. It is the contention of the learned counsel for the revision petitioners that the amendment sought by the respondents would change the nature of the suit. The respondents have not mentioned in the plaint

the survey number and the extent of the property in the plaint and now they are introducing a new case of giving survey number and the extent of the property for permanent injunction which cannot be permitted. On these grounds, it is urged that the order passed by the trial Court is not in accordance with law and it is liable to be set aside.

6. It is obvious that the respondents are the plaintiffs who filed the said suit for permanent injunction at the first instance, and in that suit, they have also filed I.A.No.270 of 2013 under Order XXXIX Rule 1 of CPC seeking interim injunction. But, the trial Court dismissed the same observing that the plaintiffs are not in possession of the suit schedule property. Aggrieved by the same, they preferred CMA.No.7 of 2013 before the District Court, Vizianagaram (for short, appellate Court) has also dismissed the same. During pendency of said CMA, the defendants constructed RCC building unauthorizedly, and therefore, the plaintiffs have filed I.A.No.820 of 2014 for amendment of the plaint and the trial Court has allowed the same.

7. Learned counsel for the respondents/plaintiffs placed reliance of the decisions of the Hon'ble Supreme Court in Sampath Kumar v. Ayyakannu¹, Pankaja v. Yellappa (D) by LRs.² and Rajesh Kumar Aggarwal v. K.K. Modi³ and submitted that amendment of pleadings can be permitted before commencement of the trial. In the instant case, the trial has not yet been commenced, and therefore, the order of the trial Court is valid.

¹ AIR 2002 SC 3369

² AIR 2004 SC 4102

³ AIR 2006 SC 1647

8. It is obvious from the above three decisions that amendment of plaint can be permitted before commencement of trial. It is the case of the respondents that they have filed said suit for permanent injunction against the petitioners, and in the said suit, they have also filed a petition for grant of temporary injunction. The temporary injunction petition was dismissed by the trial Court, for which, the respondents filed a Civil Miscellaneous Appeal before the appellate Court. During the pendency of CMA, the petitioners herein have constructed a building unauthorisedly in the scheduled premises. Having no option, the respondents filed I.A.No.820 of 2014 for amendment of the plaint, as they have lost possession over the property. All these facts can be proved only if the amendment is permitted.

9. It is also pertinent to note that when the respondents have filed a suit for permanent injunction, and lost possession, it is inevitable for them to seek for declaration of title and also for recovery of possession and also for removal of unauthorized constructions. Therefore, I do not find any illegality in the order passed by the trial Court in allowing the amendment of plaint for the above reliefs. The contention raised by the learned counsel for the petitioners that the nature of the suit would be changed cannot be accepted for the reason that the cause of action arises only when there was interference of the possession of the plaintiffs in the suit property. When the plaintiffs were dispossessed during the pendency of the suit, they are definitely entitled for seeking amendment of the plaint. Therefore, in view of the foregoing reasons, I do not see any valid ground to set aside the order of the trial Court.

10. In the result, the Civil Revision Petition is dismissed.

11. As a sequel, miscellaneous petitions, pending if any, shall stand dismissed. No order as to costs.

GUDI SEVA SHYAM PRASAD, J

Date: 10.03.2017
TJMR

