

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2471 of 2016

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the orders dated 17.02.2016 in I.A.No.909 of 2015 in O.S.No.486 of 2013 on the file of the Court of IV Additional Junior Civil Judge, Rajahmundry.

The parties hereinafter will be referred to as they are arrayed before the trial Court to avoid confusion.

Heard both the counsel.

The contention of the learned counsel for the petitioner is two fold:

1. The incident that took place on 24.08.2013 forms integral part of the pleading and the same was not considered by the trial Court on right perspective.
2. He further submitted that the findings recorded by the Court below are not sustainable either on facts or in law.

Per contra, learned counsel for the respondents submitted that the proposed amendment will not fall within the ambit of Order VI Rule 17 CPC and the same was considered in right perspective by the trial Court. She further submitted that there is no illegality or irregularity in the orders of the trial Court.

A perusal of the record reveals that the petitioner herein filed O.S.No.486 of 2013 on the file of the IV Additional Junior Civil Judge, Rajahmundry against the respondents for perpetual injunction in respect of an extent of 407 sq. yards in R.S.No.476, 477, 477/ P in LP No.110/ 88 Plot Nos.25 and 26 of Pidimgoyyi Village of East Godavari District.

During pendency of the suit, the petitioner herein filed I.A.No.909 of 2015 under Order VI Rule 17 CPC seeking for amendment of the plaint. The respondents filed counter and opposed the proposed amendment. After affording a reasonable opportunity to both parties, the trial Court dismissed the petition. Hence, the revision.

In order to appreciate rival contentions, it is not out of place to extract here under relevant portion of the affidavit.

“4(a) Plaintiff submits that the defendants ploughed plaint schedule property and 20 other adjacent plots in third week of August 2013 and on 24.08.2013 when my father went and saw, he noticed that defendants high handedly ploughed the land, as her father used to look after this property. On enquiry the defendants openly proclaimed that the land in extent Ac.2.00 cents belong to their father Matta Buli Satyam and their father did not sell out to any body and they will not allow any body to enter into the land in extent Ac.2.00 cents. Then immediately plaintiff's father Sri B.S.P.Chowdary and her neighbour plot owner Smt. Jalagam Rama Devi's brother-in-law Sri Harnath made a complaint in Bommuru Police Station. Bommuru police summoned the defendants and demanded them to show documentary evidence to their claim, when they failed to show any documentary evidence, S of police, Bommuru admonished them and advised plaintiff's father to file a civil suit and obtain injunction orders as plaintiff is having documentary evidence.”

The suit is filed in respect of an extent of 407 sq. yards. If the proposed amendment is allowed, the extent of suit schedule property comes to Ac.2.00 consisting of 20 plots. The present petition is filed seeking for amendment of plaint in order to incorporate the above para to prove that the petitioner's father visited the suit schedule property on 24.08.2013. It is not the case of the petitioner that she herself visited the plaint schedule property. Whether the petitioner's father

approached Bommuru Police Station or not will fall outside the purview of pleading. It is needless to say that the Court can allow the amendment petition to include subsequent events, which has direct bearing on the issue involved in the main suit in certain exceptional cases. The present suit is confined only to 407 sq. yards. In a suit for perpetual injunction, the burden of proof lies on the plaintiff to prove whether he or she was in possession of the suit schedule property as on the date of filing of the suit or not. The proposed amendment neither directly nor impliedly or remotely connected with the core issue involved in the suit. The trial Court considered all these aspects and dismissed the petition. The trial Court assigned reasons much less cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the trial Court. There is no illegality or irregularity in the findings recorded by the trial Court warranting interference of this Court. Accordingly, there are no merits in this revision petition and the same is liable to be dismissed.

In the result, the Civil Revision Petition is dismissed. Miscellaneous Petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

8th February 2017.
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