

THE HON'BLE MS. JUSTICE J. UMA DEVI

CRP NO. 5237 OF 2017

ORDER:

The order dated 13.9.2017 passed by the Senior Civil Judge, Bodhan dismissing I.A. No. 144 of 2017 in O.S.No. 70 of 2009 is challenged in this revision petition by the petitioner therein.

The petitioner is the first defendant in O.S.No. 70 of 2009 against whom the respondents-plaintiffs filed a suit for perpetual injunction. While the said suit was pending, I.A.No. 144 of 2017 was filed by the petitioner-1st defendant under Order 6, Rule 17 of C.P.C. seeking permission for amendment of his written statement in para-7 to delete the name of the plaintiff No.1 on the eastern side boundary and to add the name of Jangam Gangaiappa. The said amendment sought by the petitioner has not been ordered by the learned trial Court. Having been aggrieved by the order of the trial Court rejecting the prayer made by the petitioner in carrying out the amendment of his written statement, the present revision petition is filed.

The petitioner's contention is that the amendment for correction of eastern side boundary in para-7 at page 4 of the written statement is sought, but the trial Court misread the prayer and has rejected the relief sought by him taking into consideration the assertions he made in para-7 at page No.2 of his written statement. The petitioner states that the amendment of eastern boundary is sought based on the rectification deed dated 13.10.2010 and relying on the said deed, he had sought for amendment in O.S.No. 200 of 2007 on the file of the Junior Civil Judge, Bodlhan which was filed by him for declaration as against the present

respondents and others. The delay, if any, caused in filing of the present application seeking to amend the pleading is not intentional and that the delay, if any, occurred is only on account of the stay granted in O.S.No. 70 of 2009. The declaration suit which is of comprehensive nature is decreed in his favour, therefore there is justification in his favour in asking for amendment of the eastern boundary which is mentioned in para-7 of page-4 of the written statement.

Learned counsel appearing for the respondents-plaintiffs, while supporting the order passed by the trial Court, stated that the relief sought for in the present application has rightly been disallowed by the trial Court by recording valid reasons.

Having heard the submissions of the learned counsel appearing for both sides, this Court finds justification in the request made by the petitioner for amendment of his pleading in his written statement which he got mentioned in para-7 of page-4 of his written statement, since such request was made based on the rectification deed said to be executed in his favour.

It is true that the petitioner has not taken steps to get the pleadings amended soon after the execution of the rectification deed in his favour, but, according to the petitioner, the delay, if any, caused in not filing the petition for amendment is not intentional, and it is because of the stay ordered in O.S.No. 70 of 2009 in which he sought for amendment of his pleading mentioned in his written statement. The material available in the case record indicates that the petitioner filed a suit for declaration, and in the said suit an amendment was already ordered for mentioning of

eastern side boundary as that of the land of Jangam Gangaiappa and such amendment was ordered taking into consideration of the rectification deed dated 13.10.2010.

Order 6, Rule 17 of C.P.C. confers power on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings, if such amendment is necessary for the purpose of determination of the real disputes in controversy between the parties. It is not as though the amendment which the petitioner intends to make is not within the knowledge of the respondents herein as they are also parties to the earlier litigation said to be initiated by the petitioner herein as against them. Having regard to the fact that similar amendment has already been ordered in O.S.No. 200 of 2007 and taking note of the legal provision which confers power on the Court to permit the parties to amend the pleadings at any stage of the case if such amendment is necessary for proper adjudication of the disputes in controversy, this Court hereby sets aside the order impugned in this revision.

In the result, the revision petition is allowed, consequently IA No. 144 of 2017 in O.S.No. 70 of 2009 on the file of the Senior Civil Judge, Bodhan is allowed giving liberty to the respondents-plaintiffs to file rejoinder, if any after the necessary amendment is carried out by the petitioner in his written statement. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt. 24.11.2017
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