

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.2215 of 2017

ORDER:

Heard the learned counsel for the petitioner. None appears for the respondent.

2. This Revision Petition is filed challenging the order dt.31-01-2017 in I.A.No.121 of 2015 in O.S.No.231 of 2014 of the I Additional Junior Civil Judge, Eluru.

3. Petitioner herein is the defendant in the suit. Respondent/plaintiff filed the suit for perpetual injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the plaint schedule property including the usage of a vent shown as “D” in the plaint plan to drain out the rain water and drainage water from the plaint schedule property. In the plaint, he alleged that this vent is located in a joint wall between his property and the present defendant’s house property in the North-East corner to drain out rain water and drainage water towards North from point “D” in the plaint plan. He alleged that the defendant was proclaiming that he would not allow the plaintiff to drain out the rain water and drainage water towards North through the vent “D” existing in the joint wall and he would close it after selling it to one Ad. Baig.

4. A Written Statement was filed by the petitioner opposing the suit claim.

5. An advocate-commissioner was appointed to note down the physical features of the plaint schedule property. He inspected the site as well as the disputed drainage and filed a report on 22-02-2015 stating that there is no pipe connecting to the joint “D” under the earth.

6. Then the respondent filed I.A.No.121 of 2015 stating that the petitioner had removed the existing pipeline illegally to ensure that the drain and rain water would not flow from the plaint schedule property at point “D”. He stated that since he came to know of it in April, 2015 through the report dt.22-02-2015, he was advised by his advocate to seek amendment of the plaint by seeking direction to restore the underground drainage pipeline from point “D” to “F” by way of mandatory injunction etc.

7. This application was opposed by the petitioner even denying the appointment of the advocate-commissioner and the filing of the report. He contended that the proposed amendment goes to the root of the matter and completely changes the scope of the case and that the respondent did not furnish the date and year of closing of the under ground pipeline by the petitioner, and that application for amendment cannot be allowed after the trial has commenced.

8. By order dt.31-01-2017, the Court below allowed the said application. It held that the existence of the drain or its non-existence at the point “D” as pleaded by the respondent would be

decided after giving opportunity to both parties and permitting amendment of the plaint at instance of the respondent does not mean that the relief which the respondent sought would be automatically granted. It held that opportunity would be given to the petitioner to file additional written statement and to speak about the facts pleaded by the respondent. It held that if no opportunity is given to the respondent to amend the plaint, the ground realities that were existed may or may not come to the notice of the Court.

9. Assailing the same, this Revision Petition is filed.

10. Learned counsel for the petitioner contended that the Court below ought not to have allowed the application for amendment after the trial has commenced and that the very case set up in the application for amendment is false.

11. These two contentions are not tenable. Firstly, if the facts compelling the respondent to amend the plaint have come to his notice after the suit is filed, it cannot be said that because trial has commenced, he should not be allowed to amend the pleadings or the prayer. This is because the purpose of permitting amendment is to avoid multiplicity of proceedings. Further while deciding whether or not to allow the application for amendment, the Court is not concerned with the correctness or otherwise of the case set up in the application for amendment by the party seeking the amendment.

12. I am of the opinion that the Court below has given cogent reasons why the application filed by the respondent for amendment of the plaint needs to be allowed and since the interests of the petitioner have been sufficiently protected by permitting him to file additional Written Statement, I am not inclined to interfere with the order passed by the Court below.

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

14. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-04-2017
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