

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.5106 of 2017

ORDER:

Heard the learned counsel for the petitioner.

2. This Civil Revision Petition is filed assailing the order dt.28-08-2017 in I.A.No.957 of 2016 in O.S.No.199 of 2013 of the Principal Senior civil Judge, Tirupati.

3. The said suit was filed initially in the year 2005 before the I Additional Junior Civil Judge, Tirupati and was numbered as O.S.No.51 of 2005. Later it was transferred to the Principal Senior Civil Judge, Tirupati and renumbered as O.S.No.395 of 2013.

4. The respondent Nos.1 and 2 are plaintiffs in the suit. The 3rd respondent was the 1st defendant in the suit.

5. The petitioner herein was impleaded as a party in this suit only by virtue of order dt.03-09-2016 passed in I.A.No.331 of 2016.

6. Thereafter, respondent Nos.1 and 2/plaintiffs filed I.A.No.957 of 2016 to amend the prayer in the suit by seeking additional relief of mandatory injunction.

7. In the affidavit filed in support of that application, it is stated by 2nd respondent/2nd plaintiff that though he filed an independent suit O.S.No.723 of 2009 against the petitioner, the respondents are entitled to seek amendment of the plaint because a

plea was taken by the petitioner that she had made constructions in the plaint schedule properties violating the order of *status quo* initially granted against 3rd respondent.

8. This application was opposed by the petitioner alleging that this application is filed only to drag on the proceedings in the suit. It is further contended that the respondent Nos.1 and 2 are aware of the right, title and possession of the petitioner in the plaint schedule property. They had filed O.S.No.723 of 2009, though they were not owners and were not in possession and enjoyment of the same. She contended that she had been residing in the property by making constructions and also making statutory payments and to the application is not maintainable.

9. By order dt.28-08-2017, the Court below allowed the said application. It held that in the present suit, both respondent Nos.1 and 2 had initially sought declaration of title and permanent injunction, but in O.S.No.723 of 2009 only 2nd respondent/2nd plaintiff sought relief of declaration and permanent injunction; that the petitioner's claim is that she made constructions over the plaint schedule property during pendency of the suit by purchasing it from the 3rd respondent and if the said allegation is proved and the suit is decreed in favour of the respondent Nos.1 and 2, the petitioner is liable to remove the constructions. It further held that if amendment is allowed, since the suit is at the beginning of the stage of marking documents and cross examination of P.W.1, no prejudice will be

caused to the petitioner and 3rd respondent, that they can file additional Written Statement and no prejudice would be caused to them.

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

11. Learned counsel for the petitioner contended that the proposed amendment is barred by limitation since she had asserted in the Written Statement filed in O.S.No.723 of 2009 itself about the making of the construction, and no steps were taken at that time or immediately by the respondent Nos.1 and 2 to seek the amendment of the plaint in this suit O.S.No.199 of 2013.

12. Admittedly 1st respondent is not a party in O.S.No.723 of 2009 and only the 2nd respondent is party therein. When the petitioner is impleaded in the suit O.S.No.199 of 2013 only on 03-09-2016 and thereafter moved the present application, it cannot be said that the application is not maintainable. Also the plea of limitation is a mixed question of law and fact and a Court below will go into the said issue also whether or not any specific issue to that effect is framed by it. It is also settled law that while dealing with an application for amendment, the Court cannot go into the correctness of the plea set up in the amendment.

13. In this view of the matter, I do not see any error of jurisdiction in the order passed by the Court below warranting

interference by this Court under Article 227 of the Constitution of India.

14. Accordingly, the Civil Revision Petition is dismissed.

No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-11-2017

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