

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.2960 of 2017

ORDER:

The civil revision petition is filed questioning the order and decree dated 18.04.2017, passed by the Principal District Judge, Nellore, in I.A.No.646 of 2016 in O.S.No.336 of 2011.

The impugned application is filed under Order VI, Rule 17 and read with Section 151 of C.P.C seeking to amend the written statement by adding the following:

"Proposed amendment:

Add para 6(a)

The defendants further submits that the plaint schedule property was being used as fish ponds. The pond was drained out immediately after the agreement enabling the respondent to measure the land. Subsequently, the land was measured and ascertained the actual extent, which was tallied to the extent of plaint schedule. Thereupon, the respondent gave a notice and filed the suit. Subsequently, the respondent and his men not allowed the defendants to do fish culture in the plaint schedule land and obstructed them from doing culture. They tried their level best to convince the defendant and his men, but in vain. As there is no other alternative, this defendant along with the 2nd defendant filed O.S.No.116 of 2013 on the file of I Additional Junior Civil Judge, Nellore against the plaintiff on 25.2.2013 for permanent injunction restraining the plaintiff and his men from interfering with their peaceful possession and enjoyment in the plaint schedule property. The plaintiff herein received summons in the said suit, engaged an advocate and failed to file a written statement in the said suit. Late, the plaintiff was set ex parte and an ex parte decree is passed against the plaintiff on 9.7.2013 in the said suit. Until then the defendants and their men were not allowed from doing fish culture in the plaint schedule property by the plaintiffs. The defendants were suffered loss of crop from 24.3.2011 to 9.7.2013, for which the plaintiff is held responsible."

In the affidavit filed in support of the impugned I.A seeking amendment, the averments are that the suit has been filed by the

respondent-plaintiff for recovery of a sum of Rs.5,00,100/- which was paid as advance pursuant to the agreement of sale dated 24.03.2011. On account of certain subsequent developments, the respondent sought refund of the money of Rs.5,00,100/- and when the same was not complied with, the respondent filed a suit in O.S.No.336 of 2011 on the file of Principal District Judge, Nellore and the petitioners filed written statement in the said suit. Evidence of P.W.1 was adduced and the cross-examination of the P.W.1 was also completed. At that stage, petitioners herein filed the impugned I.A stating that they could not plead certain facts in relation to a suit in O.S.No.116 of 2013 filed by them on the file of the I Additional Junior Civil Judge, Nellore against the respondent for a decree of permanent injunction and thereafter, as the respondent failed to contest the said suit, it was decreed ex-parte on 9.7.2013. It is also stated that the petitioners had filed two applications in I.A.Nos.103 and 104 of 2016 in O.S.No.116 of 2013 seeking to reopen and recall the P.W.1 to elicit the above fact from the respondent and both the I.As are dismissed by the court below. In the circumstances, the petitioners filed the impugned I.A. seeking amendment.

Perused the material available on record. In the affidavit filed in support of the amendment petition, the reasons set out are that by oversight petitioners have failed to plead and bring on record the factum of their filing and the suit having been decreed on account of the respondent-plaintiff preventing them from enjoying the fish pond. It is also stated in the affidavit that when the petitioners sought to cross-examine the P.W.1 to elicit these aspects, objection was taken that there was no pleading to the said

aspect. In those circumstances, the impugned I.A came to be filed.

In this context, Order VI Rule 17 of C.P.C may be noticed:

“Amendment of pleadings under Order 6 Rule 17 CPC

Amendment of pleadings.–

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:-

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

The proviso to Order VI Rule 17 of C.P.C is of limited scope and the bar contained in the Order VI Rule 17 proviso that no amendment shall be allowed after commencement of the trial is with an exception that the amendment can be permitted if the Court is satisfied inspite of due diligence on the part of the party who seeks amendment such ~~pleas~~ could not have been raised before the commencement of the trial. It may be noted that even as per the petitioners affidavit the suit in O.S.No.116 of 2013 filed by them came to be disposed of as far back as on 09.07.2013. The application seeking amendment is filed on 27.07.2016 that too after adducing the evidence of P.W.1. In other words, there is no due diligence on the part of the petitioners. The trial Court having found the same and considering the nature of dispute, which is required to be the decided in the suit that the suit is filed only for recovery of the money did not find the reasons stated by the petitioners convincing and thus dismissed the impugned I.A. There is no reason for this Court to interfere with the order of the Court below inasmuch as the petitioners though had ample opportunity to seek the amendment at the earliest by the time did

not seek. Even other wise, as the judgment and decree dated 09.07.2013 passed by the I Additional Junior civil Judge, Nellore in O.S.No.116 of 2013, are public documents, it is always open for the petitioners to bring the same on record and mark them during the time of the defendant's evidence in the present suit.

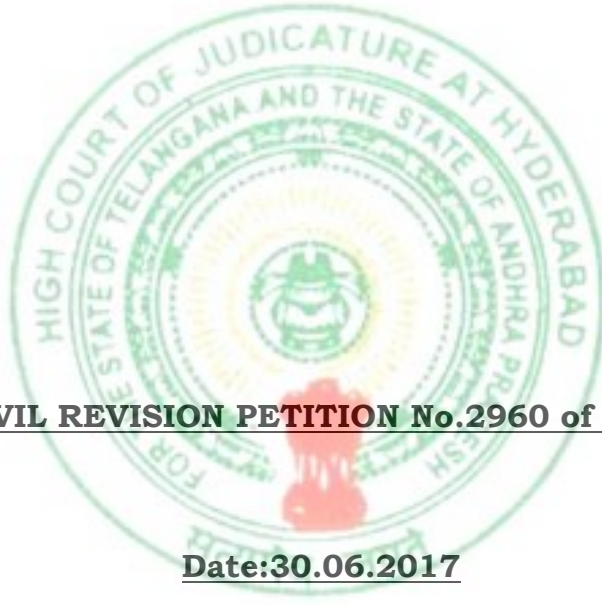
Accordingly, the civil revision petition is dismissed. Miscellaneous Petitions, if any, pending in this civil revision petition shall also stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

30th June, 2017
Gk



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM



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Date:30.06.2017

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