

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 845 of 2017

ORDER:

1) Aggrieved by the order, dated 30.12.2016, passed in I.A.No.1034 of 2016 in O.S.No.25 of 2006 on the file of the Principal Junior Civil Judge, Puttur, wherein an application filed under Order VI Rule 17 and Section 151 of C.P.C. read with Rule 28 of the Civil Rules of Practice, seeking permission of the Court to amend the plaint, was rejected, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) Since the respondents are government officials, learned counsel for the petitioner was permitted to serve notice on the counsel appearing for the respondents before the trial Court. In spite of service there is no representation on behalf of the respondents. Hence, heard the learned counsel for the petitioner and perused the record.

3) The facts in issue are as under:

The petitioner, who is the plaintiff, filed the above suit in the year 2006, seeking permanent injunction. Along with the suit, I.A.No.130 of 2006 also came to be filed seeking appointment of an advocate-commissioner to inspect the suit schedule property and value of the building. The Advocate-commissioner visited the same and filed his report, estimating the value of the building at

Rs.25,00,000/- . While things stood thus, the 9th defendant high handedly demolished the said building. Pursuant thereto, the petitioner filed W.P.No.11116 of 2006 before this Court, questioning the illegal action of the Commissioner, Puttur Municipality. As per the directions of this Court, the petitioner filed I.A.No.672 of 2015 seeking appointment of an advocate-commissioner to assess the damage with the help of civil Engineer. The said I.A. was dismissed. Assailing the same, the petitioner filed C.R.P.No.4861 of 2016. The said C.R.P. was allowed directing the Court below to appoint a Civil Engineer to visit the premises and assess the value of the demolished structures. Pursuant thereto, the Civil Engineer was appointed, who submitted his report before the Court below. After receipt of the report, the petitioner filed the present I.A. seeking amendment of the plaint, rejection of which, lead to filing of the present Civil Revision Petition.

4) As seen from the record, the petitioner earlier filed W.P.No.11116 of 2006 questioning the action of the 9th defendant in demolishing the structure without following the due process of law. After hearing the matter, this Court disposed of the writ petition permitting the petitioner to avail common law remedy before a competent Civil Court, to establish the claim for damages. Thereafter, the petitioner herein is said to have filed I.A.No.672 of 2015 seeking appointment of an advocate-commissioner to estimate the value of the demolished portion. The said petition was dismissed. Aggrieved by the same,

C.R.P.No.4861 of 2016 came to be filed, which was allowed directing the Court below to appoint a Civil Engineer to visit the premises and assess the value of the demolished structured. The record further discloses that as per the report filed by the Commissioner/ Civil Engineer, the total loss caused to the petitioner was assessed at Rs.21,00,000/ -. In view of the above, the petitioner made an application for amendment of the plaint claiming the quantum of damages. Much prior to the date of the impugned order, the following issues were framed.

1. Whether this Court having jurisdiction to try the suit?
2. Whether the plaintiff is in possession and enjoyment of the plaint schedule mentioned property as prayed for?
3. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
4. To what relief?

5) Two additional issues were also framed on 13.03.2015 which are as under:

1. Whether the defendant No.9 municipality removed the encroachments as per F.M.B. as pleaded by the defendant No.9 in additional written statement?
2. Whether the defendants are liable to pay compensation as per market value as pleaded by the plaintiff?

6) Therefore, the issue with regard to payment of compensation was framed much prior to the order passed in W.P.No.11116 of 2006 and also in C.R.P.No.4861 of 2016.

7) In *Revajeetu Builders and Developers v. Narayanaswamy and sons and others*¹ the Apex Court, after analysing critically the point in issue, deduced the following basic principles to be taken into consideration by the Courts, while allowing or rejecting the application for amendment:

- 1) Whether the amendment sought is imperative for proper and effective adjudication of the case.
- 2) Whether the application for amendment is bona fide or mala fide;
- 3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- 4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- 5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- 6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

8) In *P.A.Jayalakshmi v. H.Saradha and others*², while dealing with Order VI Rule 17 of C.P.C. the Apex Court held that it

¹ (2009) 10 SCC 84

² (2009) 14 SCC 525

is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI Rule 17 of C.P.C. restricts the power of the Court. It puts an embargo on the exercise of its jurisdiction. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction to allow the amendment of the plaint.

9) In the instant case after assessment of loss by the civil Engineer appointed pursuant to an order of this Court, the petitioner made an application seeking amendment of the plaint. It is not as if the petitioner has come forward with a new plea at a later point of time. The issue with regard to payment of damages was framed in the year 2014 itself. Therefore, this Court is of the view that no prejudice would be caused, if the plaint is amended.

10) Accordingly, the Civil Revision Petition is allowed setting aside the order dated 30.12.2016 passed in I.A.No.1034 of 2016 in O.S.No.25 of 2006 on the file of the Principal Junior Civil Judge, Puttur. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

28.04.2017
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