

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION NO.3249 of 2017

ORDER :

Assailing the order dated 12.06.2017, passed in I.A.No.984 of 2016 in O.S.No.191 of 2010, wherein an application to amend the plaint was rejected, the present revision came to be filed under Article 227 of the Constitution of India.

2. The facts in issue are as under:

The petitioner/ plaintiff filed O.S.No.191 of 2010 to restrain the defendants, their men and agents from interfering with his peaceful possession and enjoyment of the plaint schedule property by means of permanent injunction. After cross examination of PW1, an application in I.A.No.984 of 2016 came to be filed for amendment of plaint. The contents of the affidavit filed in support of the I.A. would show that the defendants are causing obstruction from using common passage and also closing the way by putting thorny fence. The averments in the application further shows that the defendants are putting debris in the common passage and the second defendant with the help of the henchmen is trying to cut and carry away valuable old neem and other green manure trees, which are on either side of the pathway, which belongs to all the sharers. A counter came to be filed opposing the same. The material on record would show that earlier the relief which was sought for by the petitioner/plaintiff is for permanent injunction and six years thereafter, the plaintiff preferred an application seeking mandatory

injunction. The trial Court after considering the rival arguments, rejected the said application. Aggrieved by the same, the present revision came to be filed.

3. Learned counsel for the petitioner mainly submits that since the reason for amendment of prayer seeking mandatory injunction is reflected in the original plaint itself, no prejudice would be caused if the request of the petitioner is accepted now. It is further stated by the learned counsel that since the trial has not commenced and having regard to the circumstances indicated above, the petitioner would be put to irreparable loss, if his request to amend the prayer is not allowed. The same is opposed by the learned counsel for the respondents contending that, as on today, the trial has commenced and even the cross examination of PW1 is over. Apart from that, he submits that in view of Order VI Rule 17 of CPC, the request of the petitioner cannot be accepted. Moreover, when the averments in the plaint itself disclose that the defendants are obstructing the passage by putting debris and other thorny bushes. He also submits that in view of Article 113 of the Indian Limitation Act, the petitioner cannot now seek for relief of mandatory injunction.

4. Order VI Rule 17 of CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. Proviso further states that no application for amendment shall be allowed after commencement of trial, unless the

Court comes to a conclusion that inspite of due diligence, the parties could not have raised the matter before the commencement of trial.

5. In the instant case, the relief which was sought for in the original plaint was for perpetual injunction. The contents of the plaint in paragraph Nos.10, 11, 12 clearly show that the defendants were causing obstructions to the plaintiff from using common passage by putting thorny fence. It is further stated that except the said approach there is no other way for the plaintiff to reach his house. It is further stated therein that defendant Nos.1 and 2 are causing obstruction to the plaintiff by putting debris in the common passage i.e., at the place of the land of the plaintiff. It is further stated that the defendants have damaged the natural fencing along with boundaries. Therefore, the ground which is now taken for amendment of prayer was available to the plaintiff even in the year 2010. No reasons are given as to why the petitioner failed to seek a relief of mandatory injunction at the earliest point of time. Further, it is to be noted that the suit was filed in the year 2010 and trial has already commenced. Learned counsel placed on record the material to show that PW1 was cross examined by the learned counsel for defendant No.1 on 05.06.2017. Therefore on both counts, the petitioner is not entitled for any relief.

6. The other ground raised by the learned counsel for the respondents, is that as per Article 113 of the Limitation Act, the request of the petitioner seeking issuance of mandatory injunction cannot be accepted. As seen from Article 113 of the Limitation Act, the limitation of three years period has been prescribed, commencing

from the date when the right to sue accrues, for those suits for which there is no prescribed period of limitation under the Limitation Act. From the above, it is clear that the application for issuance of mandatory injunction needs to be filed within a period of three years from the date when the right to sue accrues. As seen from the averments in the suit filed in the year 2010, the defendants herein were interfering with the passage by way of putting thorny fence and also throwing debris. Though while making such allegations in the plaint, the petitioner only sought for permanent injunction but nearly six years thereafter he sought for amendment of prayer basing on the very same allegations, which were made in the year 2010. In *Vidyabai and Others Vs. Padmalatha and another*¹, the Apex Court, while dealing with an issue as to whether pleadings can be directed to be amended after the hearing of a case begins, in paragraph No. 14, observed that “It is the 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 the Code restricts the power of the Court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint”.

7. For the aforesaid reasons and in view of the judgment referred to above, the request of the petitioner cannot be granted.

¹ AIR 2009 SC 1433

8. Accordingly, the CRP is dismissed. No costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

08.08.2017
vhb

