

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Civil Revision Petition No.2066 OF 2017

ORDER:

This Civil Revision Petition is filed against order dated 09.08.2016 in I.A.No.52 of 2016 in O.S.No.87 of 2013, wherein the Court below has allowed the application filed by the respondent herein under Order 6 Rule 17 read with Section 151 CPC allowing the amendment for converting the suit from one of perpetual injunction into suit for declaration of title and recovery of possession.

Heard learned counsel for the petitioners and learned counsel for the respondent.

Learned counsel for the petitioners submits that after commencement of trial, amendment cannot be ordered after amendment of CPC. She also submits that by allowing the amendment, the cause of action and the nature of the suit will be changed, as such, amendment is not permissible. But the Court below has erroneously allowed the said application without considering the objections raised by the petitioners. In support of her contention, she relied on the judgment reported in **Rahimunnisa Begum v. Mohd. Mohammadulla Khan Durrani**¹.

On the other hand, learned counsel for the respondent submits that only chief affidavit is filed and there is no cross-examination of the respondent/plaintiff and no evidence is produced and that the trial has not commenced. He submits that the suit is for perpetual injunction and same is now converted into one in the nature of declaration of title and recovery of possession since during the

¹ 2004 (2) ALD 511

pendency of the suit, the revision petitioners/defendants encroached the suit schedule property.

In this case, it is to be seen that admittedly, only chief affidavit of the respondent/plaintiff is filed, as such, the trial has not commenced before the Court below, in view of same, the objection of the revision petitioners that after commencement of the trial, amendment cannot be allowed, has no legs to stand. Moreso, the judgment cited by the learned counsel for the petitioners was also considered by the Court below and found that the same is not applicable to the facts and circumstances of the case. As far as change of cause of action is concerned, since it is specifically alleged that during the pendency of the suit, the petitioners/defendants occupied the suit schedule land and constructed building, as such, the amendment of prayer from suit for perpetual injunction to suit for declaration and recovery of possession was rightly allowed by the Court below. By the amendment of the prayer, the nature of the suit has not changed and normally Courts permit such amendment and no exception can be taken. In view of the same, I do not see any infirmity or illegality in the order passed by the Court below.

Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

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