

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL REVISION PETITION No.3349 of 2017

ORDER:

Heard Sri A. Jagan, learned counsel for the revision petitioner, and Sri V.Venkat Mayur, learned counsel for the respondents.

The order dated 09.09.2016 in I.A.No.101 of 2016 in O.S.No.61 of 2010 on the file of the learned Junior Civil Judge, Bhainsa, is now questioned by the plaintiff, as his request for amendment of plaint in introducing paragraph '6-A' seeking relief of recovery of possession during pendency of the proceedings in the suit, was declined.

Learned counsel for the respondents would submit that since the order in C.M.A. went against the plaintiff, he has now come forward with the present I.A under Order VI Rule 17 read with Sections 151 and 28 of Civil Rules of Practice to amend the plaint. Learned counsel also placed reliance in **Sampath Kumar v. Ayyakannu and another¹**, wherein an issue similar to the issue involved in the present case was answered.

Perused the order under challenge. It is a docket order recorded by the Court below. What all the Court below referred to is that if the amendment sought for is allowed, the suit will change from the suit for declaration and injunction to the suit for declaration and possession and that it is a clear change of nature of the suit.

¹ AIR 2002 Supreme Court 3369

In a suit for declaration, the relief of recovery of possession is ancillary relief and the relief of grant of perpetual injunction can be sought as consequential relief. Certainly, it cannot be said that the nature and character of the suit will completely change by introducing the present amendment. It is also not the case that a right that has been accrued to the respondents will get defeated in case the amendment is allowed. Therefore, the order under challenge is hereby set aside permitting the amendment of the plaint.

Accordingly, the present revision is allowed. It is needless to mention that when amendment is carried out and neat copy of the plaint is filed, the respondents as defendants would get a chance to file additional written statement meeting the relief that would be introduced by way of present amendment.

Miscellaneous applications, if any pending in the present revision, shall stand closed. No order as to costs.

JUSTICE A.SHANKAR NARAYANA

01.09.2017

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