

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3018 of 2017

ORDER:

1) Assailing the order dated 01.03.2017, passed in I.A.No.900 of 2016 in O.S.No.132 of 2012 on the file of the Principal Junior Civil Judge, Puttur, wherein an application filed under Order VI Rule 17 read with Section 151 of C.P.C. seeking amendment in para 9 of the written statement is rejected, the present Civil Revision Petition came to be filed.

2) The petitioners herein are the defendants. The respondent herein filed a suit seeking permanent injunction. When the said suit was coming up for cross examination of PW.1, the petitioners/ defendants came to know that there was a typographical error in the 9th paragraph of the written statement, wherein instead of plaintiffs it was mistakenly mentioned as 'he', which according to the petitioner, conveys a different meaning. Hence, made an application to amend the 9th paragraph of the written statement.

3) A counter came to be filed denying the averments made in the affidavit filed in support of the petition.

4) After considering the material on record, the trial Court rejected the application. Challenging the same the present Civil Revision Petition is filed.

5) In order to appreciate the same, it would be appropriate to refer to relevant paragraphs of the plaint. The plaintiff stated that the plaint schedule property is an ancestral property of G.Krishna Reddy and his three sons viz. G.Govindha Reddy, G.Narayana Reddy and G. Subramanyam Reddy and they are in possession and enjoyment of the plaint schedule property. The said Krishna Reddy and his three sons sold away the plaint schedule property under a registered sale deed dated 03.09.2003 in favour of the plaintiff. From the date of purchase, the plaintiff claims to be in possession of the property. It is stated that the defendants, without having any manner of right or title over the property are interfering with the same. It is stated that on the western side of the property, the house of the defendants is situated and as such they have an eye sore with the plaintiff and intend to knock away the schedule property.

6) The written statement filed by the defendants is as under:

“The allegations made in para 3 of the plaint viz. the purchase of the ancestral property of G.Krishna Reddy by the plaintiff was denied. Even at para 4 of the plaint which reference to the boundaries and also the plaintiff digging water tank in the ground is denied putting the plaintiff strict proof. The allegations made in para 5 of the plaint that the defendants have no right or title over the same is denied. The case of the defendants is that the defendants put forward in para 7 of the written statement. It is stated that the defendants have purchased the schedule

property on 16.07.1952 from one G.Lakshamma for a valid consideration under registered sale deed. Since the date of purchase, the father of the defendants has been in possession and enjoyment of the property. After his demise, the defendants are in possession and enjoyment of the counter schedule property. The defendants claimed to have constructed RCC building three years back and obtained electricity service connection and also paid house tax to the authorities concerned. It is stated that while constructing building, the defendants left 6' space on the eastern side of the building and on the northern side portion which is vacant land is in possession of the defendants since 30 years. It is stated that at the time of construction there was no objection and they have also left 6' lane to go to the back side of the house. It is stated that the document dated 16.07.1952 clearly goes to show about the exact measurements and schedule of the building. It is stated in para 8 of the written statement that the defendants never interfered with the possession and enjoyment and they never damaged the water tank. The defendants filed recent photographs after service of notices. It is stated that taking advantage of temporary injunction, the plaintiff got constructed cement brick wall about week days back and threatened the defendant with dire consequences.

First sentence of para 9 reads as under:

“This defendant further submits that he has no right or possession of 6' lane on western side of

the plaint schedule i.e. on eastern side of the counter schedule.”

The word ‘he’ referred is sought to be corrected to as the ‘plaintiff’.

7) Order VIII Rule 9 of C.P.C. permits the defendants to file subsequent pleadings after getting leave of the court. Further, for better appreciation, order VIII Rule 9 of C.P.C. is extracted below:-

“Order VIII, Rule-9 of C.P.C.: Subsequent pleadings: No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.”

8) Order VIII Rule 9 of C.P.C. deals with subsequent pleadings. It has imposed bar on the parties from filing pleadings subsequent to filing of the written statement other than by way of defence to set-off or counter-claim except by leave of the Court. It does not say that no application for receiving the additional statement 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, as provided under Order 6, Rule 17, C.P.C. proviso.

9) In *P.A.Jayalakshmi v. H.Saradha and others*¹, wherein the Apex Court while dealing with Order VIII Rule 9 and Order VI Rule 17 of C.P.C. held that the courts should be liberal in allowing applications for leave to amend pleadings but the Courts must bear in mind the statutory limitations brought about by reason of C.P.C. (Amendment) Acts and the proviso appended to Order VI Rule 17 of C.P.C.

10) It is to be noted here that the only reason for rejection of the application appears to be that the defendants cannot go back on their admission by way of amendment in the written statement. But at the same time, it is also to be noted here that if the contents of paragraph 7 of the written statement are taken into consideration, the word 'he' in para No.9 does not make any sense since the contents of para 7 of the written statement establish that the defendants have left 6' lane to go to the back side of their house and the document dated 16.07.1952 show the exact measurement and schedule of the building. Therefore, this Court is of the view that by mistake the word 'he' appears to have mentioned in the first sentence of paragraph 9 and the same requires to be corrected as the 'plaintiff', otherwise paragraphs 7 and 9 would remain meaningless.

11) For the aforesaid reasons, the Civil Revision Petition is allowed and the trial Court is directed to receive the additional written statement filed by the petitioners. There shall be no order as to costs.

¹ (2009) 14 SCC 525

12) Miscellaneous Petitions, if any, pending in this Civil Revision
Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

18.08.2017
gkv/ kvrm

