

THE HON' BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.5604 OF 2017

ORDER:

The unsuccessful defendant of the pending suit O.S.No.1004 of 2014 in I.A.No.909 of 2015 on the application under Order VIII Rule 9 r/w Order VI Rule 17 C.P.C. for amendment of the written statement to incorporate an additional plea, by impugning the said dismissal order of the lower Court dated 12.07.2017 maintained the present revision.

2. Heard the learned counsel for the revision petitioner/ defendant and the learned counsel for the respondent/ plaintiff. Perused the grounds urged in the revision and the impugned order of the lower Court.

3. The suit is of the year 2014 for the relief of possession of the plaint schedule property and for damages and for costs. The claim from the plaint is that the plaintiff's maternal grandmother by name Kotla Padmaja purchased the property under a registered sale deed bearing No.1739 of 1999 dated 09.07.1999 and as the defendant is plaintiff's maternal grandmother's ex-husband and the mother of the plaintiff permitted him to continue and there was later divorce through Lok Adalat in 2006, the plaintiff, though, through her mother even allowed the defendant to reside they are terminating the license for not conducive to continue him in the property from his filing false cases against them.

4. The written statement of the defendant is with the contest that there is no cause of action for the present suit to sustain, the suit is liable to be dismissed for suppression of several material facts by the plaintiff and plaintiff has no right, ownership over the property by virtue of the alleged sale deed of 1999 referred in the plaint and there is a memorandum of understanding-cum-settlement dated 09.06.2006 pursuant to which the defendant got right over the property and plaintiff is not entitled to recovery of possession or damages and the suit claim is also barred by time.

5. It is from the pleadings after settlement of issues and after trial commenced with chief examination of plaintiff taken on oath and before commencement of the cross examination of plaintiff by defendant, the application is filed for amendment of the written statement to incorporate additional paras 4 to 9 of the affidavit to number in the written statement as paras 11 to 16 after para-10. The averments in the additional pleading to add the paras in the written statement as 11 to 16 is that there are exchange of notices including by telegraphic notice. There is earlier O.S.No.246 of 2013 for permanent injunction restraining the defendants i.e., Madhuri and Padmaja (plaintiff is no other than daughter of said Madhuri) and that suit for injunction is pending before the X Junior Civil Judge, City Civil Courts, Hyderabad with temporary injunction relief in favour of the plaintiff, who is the defendant herein in I.A.No.40 of 2013 and with the pecuniary jurisdiction objection raised therein was set at rest in the revision with a direction to pay

the additional court fee by formulating additional issue on that aspect.

6. The plaintiff, as respondent to the amendment petition, in his counter opposed saying once trial is commenced, there is no due diligence that is required to be satisfied as per the amended proviso of Order VI Rule 17 C.P.C. as also held by the Apex Court in Abdul Rehman and another v. Mohd. Ruldu and others (2012 AIR SCW 5419) and the petition is liable to be dismissed and the proposed amendment is no way relevant and the plaintiff is not even a party to the earlier suit for injunction in O.S.No.246 of 2013 and hence to dismiss the revision.

7. The observation of the lower Court in dismissing the application covered by the impugned order is that though there is an admitted fact about O.S.No.246 of 2013 filed by the defendant herein against the mother of the plaintiff herein for bare injunction, the cause of action for that suit and the present suit are since different even as per the contention of the plaintiff as respondent to the petition. Mere filing of a suit for permanent injunction and pendency of the same even to bring by amendment to incorporate in the written statement, when the matter is coming for cross examination of PW.1, there is nothing assigned of why he has not disclosed earlier even plaintiff as PW.1 did not disclose including his evidence and the proposed amendment is not even proved as highly essential for the effective disposal of the suit */is*.

8. Heard and perused the material on record including two expressions placed reliance by the learned counsel for the plaintiff/ respondent to the revision.

9. One of the expressions of the two Judge Bench of the Apex Court in *Essen Deinki v. Rajiv Kumar*¹ speaks that Article 227 of the Constitution of India does not vest unlimited authority or prerogative in High Court to correct all orders but for only errors of law patently on record warrant correction and even wrong decision cannot be interfered, if such decision has been made within the jurisdiction of the lower Court vested in it unless the Court finds that the order of the lower Court is not based on any material and a manifest injustice or a perverse outcome.

10. The other decision of the three Judge Bench *Sadhana Lodh v. National Insurance Co. Ltd.*² wherein it is observed that where there is no remedy to an aggrieved person by an appeal, where remedy is not provided under Section 115 of the C.P.C. or by any other law specifically the revision jurisdiction under Article 227 of the Constitution of India and not even under Article 226 of the Constitution of India that to be exercised by the Court. However, it is not even a matter of course for such a revision is not a review much less to re-weight the evidence of the impugned order of the lower Court.

11. The pleadings are not supposed to maintain or embody the statement of law but for to disclose the necessary facts in brief to

¹ (2002)8 SCC 400

² AIR 2003 SC 1561

elaborate in evidence to avoid any say of without pleading no evidence can be let in. It is only in writ petition proceedings are to be considered as evidence and not in the civil disputes. Once such is the case, the very written statement of the defendant clearly says the plaint averments are suppression of material facts the proposed amendment sought is the non-disclosure and suppression of O.S.No.246 of 2013 pending already filed by the defendant herein as plaintiff against the mother of the plaintiff herein and another person. Once the very pleadings in the written statement covers the same, it is left open to adduce evidence of that suppression pleaded in the written statement if relates to the present non-disclosure by the plaintiff in her plaint or atleast in her evidence as PW.1 is that earlier suit and if so on what bearing for the Court to decide. Thereby, for that there is no bar to the defendant either to suggest in the cross examination of PW.1 with reference to the earlier suit or to lead evidence in relation to that as defendant to the suit. Thus, for that matter there is no necessity to incorporate that fact by additional written statement or additional grounds to the written statement by incorporating several paras. But for that the other paras referred as paras 4 to 9 of the proposed amendment no way relate to any material fact but for referring the alleged cause of action existence or not, exchange of notices whether tantamount cause of action or not and about granting of the temporary injunction in the earlier suit for injunction and filing of a revision on sufficiency of court fee and pecuniary jurisdiction and ultimately decide in revision by

formulating a specific issue, these are not the necessity pleadings required by permitting amendment. In fact, the amendment of pleadings is basically for the purpose of bringing not only adjudication of a lis but to avoid multiplicity of proceedings and to sustain the litigation where it is necessary to determine the real controversy. Here, from the proposed amendment even the real controversy that can be brought in is non-disclosure for earlier injunction for which the plaintiff herein is not even a party, her mother as a party and if so even disclosed whether it is a suppression of material fact and what is the affect on the present suit and whether it takes away the cause of action to the plaintiff to maintain a suit for that as referred supra when the written statement clearly speaks about suppression of facts of the present claim the defendant can elaborate the same either by cross examination suggestions of plaintiff witnesses or in the defendant witnesses.

12. With the above observations, the Civil Revision Petition is closed.

13. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

DR. B. SIVA SANKARA RAO, J

Date: 05.12.2017
pab