

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.6317 OF 2017

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 04.08.2017 passed by the learned XIV Additional District Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.293 of 2016 in O.S.No.61 of 2004. The said I.A. was filed by the petitioner herein, being the plaintiff in the suit, under Order 6 Rule 17 CPC seeking amendment of the plaint by adding the following paragraphs:

'Para 9A It is submitted that, during the pendency of the above suit, in the year May, 2006 taking undue advantage in the absence of the plaintiff, the defendant No.4 and 5 without any semblance of right, title trespassed into the suit schedule property illegally which cannot be termed as legal possession.

After Para 10: The present market value of the suit schedule property-A is Rs.61,25,000/- and $\frac{3}{4}$ th is comes to Rs.45,93,750/- the plaintiff is paying Court Fee an amount of Rs.47,426/- on 45,93,750/- ($\frac{3}{4}$ amount) under Section 29 of A.P.C.F. & S.V.Act.

Similarly The present market value of the suit schedule property-B is Rs.58,60,000/- and $\frac{3}{4}$ is comes to Rs.43,95,000/- the plaintiff is paying Court fee an amount of Rs.46,426/- on 43,95,000/- ($\frac{3}{4}$ amount) under Section 29 of the A.P.C.F. & S.V.Act.

Thus a total Court fee of Rs.93,852/-.

To add in para in prayer:

The suit may be treated as one for recovery of possession part from other reliefs and decree for recovery⁶⁷ of possession be granted by dispossessing the Defendant No.4 and 5 who are in illegal trespass and handover the physical possession of the Suit Schedule property to the plaintiff.

A further relief of perpetual injunction not to interfere with peaceful possession of the plaintiff be granted as a consequential relief.'

By the order under revision, the trial Court dismissed the I.A.

Heard Sri A.Suryanarayana, learned counsel representing M/s. Pillix Law Firm, learned counsel for the petitioner-plaintiff, and Sri R.Sushant

Reddy, learned counsel representing Sri B.Vijaysen Reddy, learned counsel on caveat for respondents 1, 3 and 6 to 8-defendants 1, 3 and 6 to 8.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.61 of 2004 was filed for a declaration that the registered sale deeds bearing Document Nos.476/2002 dated 15.02.2002 and 477/2002 dated 15.02.2002 executed by defendant 1 in favour of defendants 2 and 3 were null, void, invalid and not binding upon the plaintiff and to consequently declare the sale deeds bearing Document Nos.3342/2003 dated 18.07.2003 and 3343/2003 dated 18.07.2003 executed by defendants 2 and 3 in favour of defendants 4 and 5 respectively as invalid and not binding on the plaintiff.

Defendants 1 to 3 and 6 to 8 filed a counter stating that the suit property was sold by defendant 1 in favour of defendants 2 and 3 under registered sale deeds dated 18.04.1992 and since the date of purchase, defendants 2 and 3 were in actual possession. Thereafter, they sold the suit property in favour of defendants 4 and 5 under the later sale deeds and they were put in possession.

It is an admitted fact that way back in the year 2003, the plaintiff filed a suit in O.S.No.1969 of 2003 before the learned Principal Junior Civil Judge, Ranga Reddy District, for a perpetual injunction and aggrieved by the temporary injunction granted therein, an appeal was filed by the defendants therein in C.M.A.No.179 of 2003 before the learned II Additional District Judge, Ranga Reddy District. The appellate Court recorded a finding to the effect that the plaintiff was not in possession of the suit property and set aside the temporary injunction granted by the trial Court by way of an order passed in the year 2004.

Thus, it is clear that the plaintiff has been out of possession at least since the year 2004, as the finding by the appellate Court in C.M.A.No.179 of

2003 admittedly attained finality. This being the situation, the amendment now sought to be introduced in the suit after a lapse of 12 years completely changes its nature, in as much as the plaintiff now seeks to recover possession. Various issues would arise in the context of the plaintiff not being in possession of the suit property at least from the year 2004.

Though Sri A.Suryanarayana, learned counsel, would contend that the relief of recovery of possession is a substantial relief in itself and not a consequential relief as recorded in the order under revision, this Court is of the opinion that when the plaintiff sought a declaratory relief as to the sale documents executed in favour of the defendants being null and void and not binding upon it, recovery of possession would be consequential thereto and would not be by way of an independent relief. As the plaintiff failed to seek such relief at the outset and allowed the suit to remain as framed for 12 years, it is too late in the day for it to now seek amendment. It is also admitted before this Court that the trial in the suit already commenced.

On the above analysis, this Court finds no reason to interfere with the order under revision. The civil revision petition is devoid of merit and is accordingly dismissed. Needless to state, the observations made hereinbefore are for the purpose of disposal of this civil revision petition and the trial Court shall not be influenced by the same while adjudicating the issues arising in the suit.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

SANJAY KUMAR, J

17th NOVEMBER, 2017

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