

HON' BLE SRI JUSTICE SURESH KUMAR KAIT

C.R.P. No. 6458 of 2017

ORDER:-

This Civil Revision Petition is filed assailing the order and decree dated 03.10.2017 in I.A.No. 1078 of 2014 in O.S.No. 262 of 2011 passed by the Additional Junior Civil Judge, Repalle, whereby the application filed by the petitioners-plaintiffs under Order 6 Rule 17 read with Section 151 C.P.C. seeking to permit them to amend the plaint, was dismissed.

The brief facts of the case are that the petitioners filed the suit against the respondent for permanent injunction restraining him, his men and agents from interfering with the suit schedule property. The respondent is contesting the suit by filing written statement, and subsequently, filed I.A.No. 1075 of 2011 to appoint an Advocate Commissioner to elucidate features of the suit schedule site and submit a detailed plan. Accordingly, the petition was allowed on merits by appointing an Advocate Commissioner to note down existing physical features of the site, measure the same to demarcate ABCD gully with the help of documents of both the parties, if any, with the assistance of Mandal Surveyor and file a report thereof. Accordingly, the Advocate Commissioner filed report on 06.06.2012. Thereupon, the petitioners filed

objections, but the Advocate Commissioner did not file any answers to the objections. As per the report of the Advocate Commissioner, the respondent has already encroached portion of ABCD gully and also the petitioners' site to an extent of 10.5 square yards between ADEF by constructing compound and latrine walls on northern side from east to west as shown in the plan drafted by the Commissioner. As such, the suit filed by the petitioners for permanent injunction is not beneficial to them. As the respondent already encroached into their site, the petitioners filed the Interlocutory Application to amend the plaint.

It is not in dispute that the respondent occupied the site situated in the joint gully as depicted in Item No.3 of the suit schedule property which is situated on the west of the respondent's site, and according to the Commissioner's and Surveyor's reports, the respondent occupied the suit schedule property. Hence, the petitioners prayed for delivery of vacant possession of ADEF portion as per amended plan and for mandatory injunction directing the respondent to remove the construction made in ADEF portion.

Sri Ghanta Rama Rao, learned senior counsel for the petitioners, submit that the trial Court ought to have granted permission for amendment of the suit plaint to include the relief of recovery of possession of encroached portion of the

suit scheduled property by the respondent – defendant subsequent to filing the suit by extending his compound wall beyond his house site into the joint gully as well as the vacant suit schedule property of the petitioners to an extent of 10.5 square yards as found by the Advocate Commissioner as well as suit for grant of mandatory injunction for removal of the extended compound wall. The learned counsel submits that the trial Court also erred in holding that the proposed amendment for inclusion of the relief of recovery of possession is not tenable as the petitioners did not say anything about at what point of time they were dispossessed from their site inasmuch as they have placed all the relevant facts in their affidavit clearly showing that the respondent encroached their site and the gully portion subsequent to filing the suit.

It cannot be disputed that the amendment can be allowed at any stage of the proceedings as prescribed under Order VI Rule 17 CPC as stood amended by the Amending Act, 2002 reads as under:

“The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment 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”.

It is not in dispute that the petitioners filed the suit in the year 2011 for grant of permanent injunction. As per the plaint, the plea of the petitioners is that recently the respondent is proposing to construct compound wall on all four sides of his site by occupying the site in the joint gully to the western side of ABCD portion of the plaint plan and stored the material. On that apprehension, the petitioners filed the suit for grant of permanent injunction restraining the respondent from interfering with their peaceful possession and enjoyment over the suit schedule property. Subsequently, the petitioners filed the interlocutory application in the year 2014 seeking amendment of the relief sought for in the suit. In addition to the above, the petitioners sought amendment of relief in the main suit based on the Commissioner's Report i.e. for delivery of vacant possession of ADEF portion and for grant of mandatory injunction directing the respondent to remove the constructions made in ADEF portion and for consequential injunction. According to the petitioners, the respondent has encroached their site, but in the plaint, the petitioners mentioned that the respondent intends to encroach the site situated on the western side of the gully of the respondent. In the advocate commissioner's plan, there is no description

of gully at all. As per the plaint, by the time of filing the suit, there was no encroachment by the respondent. Subsequently, the petitioners filed the application seeking delivery of vacant possession encroached by the respondent and also for mandatory injunction for removal of the construction made in ADEF portion. In the plaint plan, the petitioners have not mentioned the encroached portion by the respondent.

It cannot also be disputed that only based on the commissioner's report the issue of the alleged encroachment of the site cannot be decided and full-pledged trial is required for the purpose. If really there is any encroachment, then only question arises for delivery of possession and removal of construction.

In the case of Chandan Singh v. Gurala Ramulu and Anr.¹ this Court observed as follows:

“To claim relief of possession, there is prescribed time limit and possession has to be claimed within that period of limitation, therefore, it is incumbent on the plaintiff to necessarily plead as to when he lost the possession to examine whether the claim for recovery of possession is within the period of limitation or not. In this case, when the plaintiff contended that he is in possession and enjoyment of the property since 1976 and unless, it is pleaded in the plaint even for alternative relief, as to when he lost the possession, it is not possible to examine whether such relief is within time or not. It is well settled law that any relief, which is beyond the period of limitation cannot be allowed to be pleaded or to be claimed by way of amendment.”

¹ 2015(3) ALD 512

Keeping in view the aforementioned facts and circumstances of the case and the legal position, I find no illegality or perversity in the impugned order warranting interference of this Court.

Hence, I find no merit in the Civil Revision Petition, and the same is accordingly dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

30.11.2017

bcj

SURESH KUMAR KAIT, J

