

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.6176 of 2017

ORDER :

The Civil Revision Petition is filed by the petitioners/defendants 1 and 2, aggrieved by the order dated 15.09.2017 in I.A.No.437 of 2017 in O.S.No.1027 of 2015 passed by the learned XX Junior Civil Judge, City Civil Court, Hyderabad, which was filed to amend the plaint.

2. Heard the learned counsel for the petitioners before ordering notice to respondent No.1/plaintiff and perused the impugned order and the grounds urged in the revision.

3. The petitioners herein are defendants 1 and 2, respondent No.1 is sole plaintiff and respondent No.2 is defendant No.3 in O.S.No.1027 of 2015. Pending the suit, the plaintiff filed I.A.No.437 of 2017 under Order VI Rule 17 C.P.C. for amendment of the plaint, which is for bare injunction originally filed and the present amendment is seeking mandatory injunction directing defendants 1 and 2, to remove the so called encroachment of the public passage abutting the southern side of the main road on eastern side and such other structures made on the suit property. After contest, the said amendment was allowed by the impugned

order dated 15.09.2017. Impugning the said order, the present revision is filed.

4. The main contention is that by permitting the amendment even outcome of a subsequent event pending suit in seeking additional relief of mandatory injunction from the original relief of permanent prohibitory injunction, which changes the cause of action and nature of suit and thereby, the trial Court gravely erred in permitting amendment even trial not commenced, which is to the prejudice of the defendants.

5. In fact, the law is fairly settled in saying even a suit for bare injunction from any allegation of subsequent event after filing of suit including dispossession or any acts of possession, for amendment of the plaint to change the nature of the suit for declaration or possession etc., it will not change the nature of the suit. So far as the cause of action concerned, the original existing cause of action no way takes away by the subsequent event pending suit but for the event pending suit is also being added to the existing cause of action. In that view of the matter, the contention that the amendment changes the cause of action is untenable and it cannot be complained as a prejudice, once

the acts complained in the pending suit are prejudice to the plaintiff.

6. Having regard to the above, there is nothing to interfere with the impugned order of the lower Court, more particularly, with reference to the expression of the Apex Court in Sampath Kumar v. Ayyakannu¹.

7. Accordingly, the Civil Revision Petition is disposed of before admission for nothing to keep pending and the petitioners can file a detailed additional written statement and the observations of the trial Court or this Court in disposal of the revision will not prejudice any of the existing rights of the defendants being urged in the written statement for the trial Court to consider on ultimate merits.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date: 15-11-2017
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¹ 2002(7) SCC 559