

The Hon'ble Sri Justice M.Seetharama Murti

Civil Revision Petition No.6758 of 2017

Dated 22.12.2017

Order:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by defendant Nos.3 and 4 in an unregistered Suit assailing the Order, dated 03-11-2017, passed by the learned VIII Additional District Judge at Miryalguda, in IA.No.702 of 2017 in IA.No.1030 of 2014 filed therein.

Heard the submissions of learned Counsel for the petitioners/defendant Nos.3 and 4 at the stage of admission. Perused the material available on record.

The parties shall hereinafter be referred to as the plaintiffs and defendants for convenience and clarity.

The facts, which are necessary to be stated as a prelude to this order, are as follows:

“The plaintiff filed the aforestated suit against the defendants for setting aside a registered sale deed and gift settlement deed and for other reliefs. At the stage of scrutiny, the office of the learned District Judge returned the plaint with certain office objections. There was delay in re-presenting the plaint after complying with those objections. Therefore,

IA.No.1030 of 2014 was filed for condonation of the delay and the same was supported by an affidavit of an Advocate-Clerk. Be that as it may, there was a defect in the cause title of the said application. Therefore, the plaintiffs filed the subject application *i.e.*, IA.No.702 of 2017 under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code') for permission to amend the cause title. By the impugned order, the learned VIII Additional District Judge allowed the said petition and permitted the plaintiffs to amend the cause title *inter alia* observing that the contention that the petition in IA.No.1030 of 2014, which is supported by the affidavit of an Advocate-Clerk is not maintainable, would be considered at an appropriate stage. Aggrieved by the said order, the defendants 3 and 4 are before this Court.

The first contention of the learned Counsel for the said defendants is that when the suit is not yet registered and is at the stage of scrutiny, the Court has no power to grant an order of amendment by exercising its power under Order VI Rule 17 of the Code and that till the suit is registered, the Court is not endowed with such power of granting amendment and that, therefore, the order under revision is unsustainable.

In the well considered view of this Court, such a contention is not tenable. This Court is of the considered view that the defect in the cause title of an application filed for condonation of delay in re-presenting the plaint can be permitted to be amended in the interests of justice under Section 151 of the Code, if not under Order VI Rule 17 of the Code. It is the settled legal principle that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. On the above analysis, this Court finds that the order under revision does not warrant interference.

In the result, the Civil Revision Petition is dismissed. It is needless to state that the trial Court shall dispose of IA.No.1030 of 2014 in strict accordance with the procedure established by law and on its own merit.

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

(M.Seetharama Murti, J)

Dt: 22nd December, 2017
lur