

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.3659 of 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 28.06.2017 passed in I.A.No.1102 of 2015 in O.S.No.110 of 2009 on the file of Junior Civil Judge Court, Razole.

2. Heard the learned counsel appearing for both the parties and perused the material on record.

3. The point that arises for consideration is:

“Whether there is any illegality, irregularity and impropriety in the impugned order?”

4. A perusal of the record reveals that the petitioner filed O.S.No.110 of 2009 on the file of Junior Civil Judge Court, Razole, against the respondents for perpetual injunction in respect of the suit schedule property. Pending suit, the petitioner filed I.A.No.1102 of 2015 under Order VI Rule 17 and Section 151 CPC for amendment of pleadings and to seek the relief of mandatory injunction.

5. The respondents filed counter *inter alia* contending that the petition is not maintainable either on facts or in law.

6. The trial Court after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

7. This Court carefully perused the affidavit and the counter filed before the trial Court. Both parties have taken different stands to substantiate their contentions. One of the grounds raised by the respondents is limitation aspect. The trial Court passed the order on a wrong premise as if the respondents have constructed the toilets after

obtaining necessary permission from the concerned authority. While deciding the interlocutory applications, the Court shall not express any opinion touching the merits of the main case. In a suit for injunction, the plaintiff is entitled to seek the relief of mandatory injunction depending upon the facts and circumstances of each case.

8. In the present case, initially the petitioner filed the suit for perpetual injunction. It is the case of the petitioner that the respondents constructed the toilets during pendency of the suit. In such circumstances, the petitioner is entitled to seek the relief under Order VI Rule 17 CPC in order to put an end to the litigation once for all. The trial Court lost sight of this particular aspect and dismissed the petition on untenable grounds. If the order of the trial Court is allowed to stand, certainly it amounts to miscarriage of justice. I am not agreeing with the findings recorded by the trial Court in view of peculiar circumstances of the case. Viewed from any angle, the impugned order is liable to be set aside.

9. In the result, the Civil Revision Petition is allowed setting aside the orders dated 28.06.2017 passed in I.A.No.1102 of 2015 in O.S.No.110 of 2009. Consequently, I.A.No.1102 of 2015 in O.S.No.110 of 2009 on the file of Junior Civil Judge Court, Razole, is allowed permitting the petitioner to amend the plaint. The trial Court is hereby directed to dispose of O.S.No.110 of 2009 without being influenced by the observations made by this Court in this revision petition as well as I.A.No.1102 of 2015. The respondent is at liberty to raise the plea of limitation at appropriate stage of the suit proceedings. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:20.12.2018

Rns