

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.Nos.2041 & 2044 of 2012

COMMON ORDER:

Heard Mr.S.Lakshmi Narayana Reddy for revision petitioner and Mr.D. Ravi Shankar Rao for 1st respondent.

These two revisions are filed by Greater Visakhapatnam Municipal Corporation-Visakhapatnam. The 1st respondent filed the suit for declaration that the aerial encroachments by 2nd respondent herein on northern and western side of Item 2 of schedule property and for mandatory injunction to direct the 2nd respondent herein to remove the encroachments.

The revision petitioner herein has been arrayed as defendant No.2 in O.S.No.979 of 2011.

The revision petitioner has filed the written statement. The revision petitioner filed these two applications under Order 6 rule 17 of Code of Civil Procedure to carry out the proposed amendments in counter and the written statement. The proposed amendments read thus:

“Para-5: page.2

It is further submitted that the 1st Defendant obtained approval for the construction of ground and first floors vide proceedings in B.A.No.11467/2011/G2 ACP-IV, Dr.25.5.2011 in the total site area of 54.34 sq.mts for making ground and 1st floor RCC building construction by

removing the existing old building bearing d.No.38-19-108 at Jyothi Nagar. That as per the building rules in G.O.Ms.no.678, dt.7.9.2007, except from open space, the remaining three sides open spaces are not required for the plots below 100 sq.mts of extent. That the 1st defendant have completed the construction as per the approved plan. It is further submitted that 1st Defendant has completed her building work as per the G.O.Ms.No.678, dt.7.9.2007 and the said construction is below 100 sq.mts of extent and the Corporation Authority has also issued an endorsement to the 1st Defendant on dt.29.10.2011 vide its RC.no.18369/2011 ACPIV stated that the 1st Defendant building i.e. ground and upper floors does not cause any ventilation problem and any inconvenience to the neighbours. It is further submitted that Plaintiff got constructed his building vide B.A.No.11703/2007 where in permission was given to construct ground and first floors. That the Municipal corporation on inspection of the Petitioner/Plaintiff's building found that there were deviations with respect to the sanction plan and unauthorizedly extended the building line. The Plaintiff suppressing the above facts filed case against the Defendants."

The learned trial judge by recording the following findings rejected these two applications. Hence, the Civil Revision Petitions.

Mr.Lakshmi Narayana Reddy contends that the ground on which the applications are rejected is unavailable inasmuch as the revision petitioner being the defendant in the suit can in a given case take contradictory and inconsistent plea without prejudice to one another.

Therefore, two basic mistakes in the understanding the very prayer is made by the revision petitioner for amendment to counter and written statement. He prays for setting aside the order under revision and allow the Civil Revision Petitions.

Mr.Ravi Shankar per contra contends that the revision petitioner is local body and prayer is substantially between the respondents herein. The direction if is issued, the same will be carried out either by the Court or by the local body. The proposed amendment is completely unnecessary keeping in view the frame of the suit.

I have perused the record and noted the rival submissions.

This Court is in agreement with the objections raised by Mr.Lakshmi Narayana Reddy that the defendant enjoys greater latitude in the matter of pleading namely that the defendant can also take inconsistent and contradictory pleas, but this argument may not lead to an order as prayed for by the revision petitioner. In the fact situation, this Court is of the view that the revision petitioner is local body and is clothed with sufficient power under the Act. The 1st respondent has come to the Court for the reliefs referred to above. It is for the 1st respondent to prove his

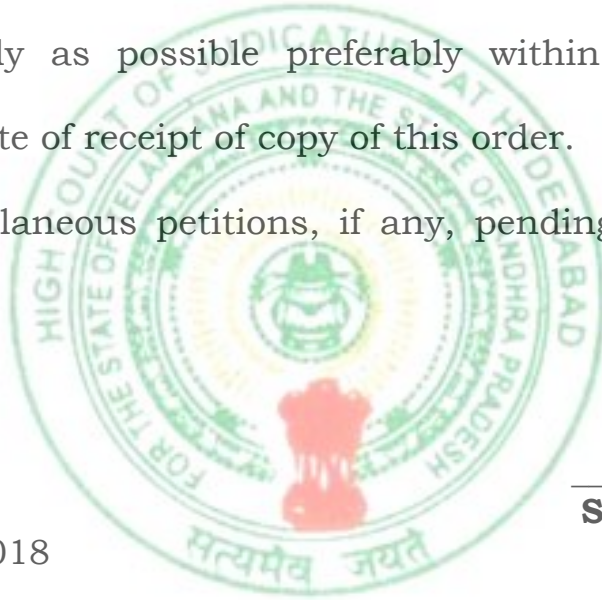
case and if there is any independent cause of action against the 1st respondent, the same ought to be the subject matter of another proceedings. The amendment is also unnecessary.

Hence, for the reason now recorded, this Court is not persuaded to entertain the prayers. The Civil Revision Petitions fail and accordingly dismissed. No order as to costs.

The trial Court considers and disposes of the suit as expeditiously as possible preferably within two months from the date of receipt of copy of this order.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 06.09.2018
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S. V. BHATT, J

