

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.804 of 2018

ORDER:

This Civil Revision Petition is filed by the petitioner/plaintiff aggrieved by the order dated 02.01.2018 in I.A.No.277 of 2016 in O.S.No.124 of 2010 passed by the Junior Civil Judge, at Nakrekal, dismissing the petition filed by the petitioner/plaintiff under Order VI Rule 17 CPC seeking permission to amend the pleadings.

2) The petitioner/plaintiff filed the suit for perpetual injunction. In the said suit he filed his chief affidavit and was cross-examined in part. At that stage, he filed amendment petition averring that the respondents/defendants forcibly occupied towards the north and west portion of suit schedule properties by illegally dispossessing him from the land. The petitioner placed the matter before the elders for settlement but proved futile.

3) The respondents/defendants opposed the said petition *inter alia* contending that in the written statement they have already categorically stated that there exists house in Sy.No.85 and the present petition was filed after commencement of trial and thus prayed for dismissal.

4) The Trial Court observed that as on the date of filing the suit there existed structures in Sy.No.85 and the petitioner failed to establish any ground to seek amendment of pleadings and dismissed the petition.

Hence the CRP.

5) Heard arguments of Sri Y.Ramatirtha, learned counsel for petitioner and Sri Sakimala Ravi Kumar, learned counsel for respondents.

6) As can be seen, the Trial Court dismissed the petition mainly on the observation that the petitioner/plaintiff failed to explain the reason for his not filing amendment petition before commencement of the trial. That is to say, in terms of Order VI Rule 17 CPC, the plaintiff failed to establish that inspite of showing due diligence, he could not file the amendment petition before commencement of the trial and therefore, amendment cannot be allowed. On a careful perusal of the respective pleading of the parties as well as the evidence of PW.1, I am of the considered view that the Trial Court committed a grave error in dismissing the petition on misapplying the Order VI Rule 17 CPC, which is the enabling provision for amendment of pleadings. Order VI Rule 17 CPC reads thus:

“Rule 17. Amendment of pleadings:

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings 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.”

Thus the substance of Order VI Rule 17 CPC is that the Court may at any stage of the proceedings allow either party to amend the pleadings. However, after commencement of the trial, before allowing the amendment, the Court shall be careful and look into the aspect whether the party who seeks amendment after commencement of the trial has established that inspite of due diligence, he could not apply for amendment, prior to the commencement of the trial. In simple, the amendment of the pleadings after commencement of

the trial is not a matter of course but depends upon, whether the party who applied for amendment has established the due diligence factor. Now the crucial question in the instant case is, when the necessity of amendment arises after commencement of the trial, due diligence factor applies and if so, whether plaintiff could establish the same. The plaint reads that the plaintiff claimed perpetual injunction against defendants and his close relations in respect of Ac.1-13gts of land. According to him, he purchased different bits of land under different survey numbers totaling Ac.3-08gts from different vendors and defendants have no right in respect of plaint schedule property. The plea of defendants as can be culled out from the written statement is that they are not denying the ownership of the plaintiff in respect of other items except Ac.0-20 gts of land in Sy.No.85. According to them, the husband of 1st defendant purchased the said Ac.0-20gts of land in Sy.No.85 from plaintiff on 11.02.1991 through simple sale deed and subsequently they constructed houses in the said land and established cattle sheds and they have been enjoying the said property to the knowledge of plaintiff. Be that it may, the plaintiff's version in I.A.No.277/2016 is that during pendency of the suit, on 10.01.2014, the defendants forcibly occupied the north west portion of the suit schedule property by dispossessing him illegally. Hence he filed I.A.No.277 of 2016 seeking permission to amend the plaint to add the relief of recovery of possession and other consequential reliefs. When the evidence of PW.1 is perused, in the cross-examination he categorically denied having sold Ac.0-20 gts of land on 11.02.1991 to the husband of defendant No.1 and their constructing houses, cattle shed etc. On the other hand, it is his categorical plea that they have constructed the houses by forcibly trespassing into his land after filing of the present suit. Whether the plea of plaintiff is genuine or the

plea of defendants is true, is a matter of fact to be determined after full-fledged trial. However, for the limited purpose of deciding the amendment petition, in my considered view, the plea of plaintiff has to be taken into consideration. Running the risk of repetition, it is his categorical version that he never sold Ac.0-20 gts of land to the husband of 1st defendant on 11.02.1991 and they did not construct the house immediately after the alleged purchase. On the other hand, the defendants trespassed into the north west portion of the plaint schedule property after filing of the suit. If these pleas were to be taken into consideration, it would manifest that the necessity to amend the plaint had arisen to plaintiff only after commencement of the trial but not before that. In this fact situation, the question of due diligence factor does not arise. The Trial Court was wrong in observing that from the written statement and the evidence of PW.1 it was clear that the defendants have purchased a part of the suit property and raised constructions even prior to the filing of the suit, it must be said that the Trial Court sorely missed the denial made by the plaintiff in his evidence. Hence the Trial Court ought to have left the issue of deciding the correctness of the pleadings of either party to the trial. Though not important but as a necessary corollary if we take the limitation aspect into consideration from the pleadings of the plaintiff, the relief of recovery of possession apparently is not barred by limitation. Ofcourse this is an aspect to be considered after trial.

7) So in any view of the matter, the Trial Court was not right in dismissing the application. The decisions in ***Chander Kanta Bansal v. Rajinder Singh Anand***¹; ***B. Sreenivasulu v. B. Kusuma Kumari and others***² and ***Dhulipalla***

¹ (2008) 2 SCC 117

² 2016 (6) ALD 120

*Srinivasa Rao v. Kandula Govardhan Rao and another*³, filed by respondents will not help their cause.

8) In the result, this Civil Revision Petition is allowed and the order dated 02.01.2018 in I.A.No.277 of 2016 in O.S.No.124 of 2010 passed by the Junior Civil Judge, at Nakrekal, is set aside. Consequently, the said I.A. is allowed permitting the petitioner/plaintiff to amend the plaint as sought for. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 31.07.2018

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³ 2018 (1) ALT 420