

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.4944 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 22.07.2016 passed in I.A.No.127 of 2014 in O.S.No.214 of 2012 on the file of the Court of the I Additional Senior Civil Judge, Nellore.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the respondents filed I.A.No.127 of 2014 in O.S.No.214 of 2012, under Order VI Rule 17 C.P.C., seeking amendment of the plaint. The petitioner filed counter *inter alia* contending that the petition is not maintainable in view of the judgment and decree in O.S.No.1021 of 2007 on the file of the Court of the Principal Junior Civil Judge, Nellore. The trial Court, after affording reasonable opportunity to both parties, allowed the petition. Hence, the revision.

4. The point that arises for consideration in this revision is:

Whether there is any illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court?

5. A perusal of the record reveals that the respondents filed O.S.No.214 of 2012 on the file of the Court of the I Additional Senior Civil Judge, Nellore, against the petitioner for delivery of suit schedule property and consequential mandatory injunction to demolish the structures in the suit schedule property. The petitioner filed written statement *inter alia* contending that the suit filed by the respondents is not maintainable either on facts or in law. During pendency of the suit, the respondents filed I.A.No.127

of 2014, under Order VI Rule 17 C.P.C., seeking amendment of the plaint. The trial Court allowed the petition.

6. Learned counsel for both parties, in one voice, submitted that by the time of filing of I.A.No.127 of 2014, the trial Court has not framed the issues.

7. This Court carefully perused the plaint as well as the proposed amendment. It is needless to say that the Court shall not allow the petition if the proposed amendment will alter the nature of the suit or change the cause of action. The respondents have not taken any new plea in the proposed amendment. The proposed amendment is in the nature of an explanation to the pleadings in the plaint. Whether the suit is hit by Section 11 of C.P.C., or not has to be decided after full-fledged trial only. The proposed amendment will not alter the nature of the suit. The cause of action as mentioned in the plaint will remain intact even after amendment of the plaint. The relief sought in the main suit will also remain intact. Even if the proposed amendment is allowed, the same would not cause any prejudice to the petitioner. If the petition is dismissed, it may not be possible for the respondents to substantiate their stand. It is needless to say that the Court can allow the amendment petition liberally before commencement of trial. The trial Court, taking into consideration the scope of Order VI Rule 17 C.P.C., allowed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the order of the trial Court warranting interference

of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

8. In the result, the Civil Revision Petition is dismissed. However, dismissal of this revision petition does not preclude the petitioner to agitate his legitimate and legal grievances before the trial Court. There shall be no order as to costs.

9. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 10.10.2018
Isvd

T.SUNIL CHOWDARY, J

