

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1621 of 2018

ORDER:

Heard learned counsel for the revision petitioner/defendant and respondents/plaintiffs and perused the impugned order of the lower court in I.A.No.883 of 2017, dated 29.11.2017, in the pending suit O.S.No.292 of 2013.

2. The lower Court dismissed the application for receiving of additional written statement with additional plea of suit for bare injunction is not maintainable without seeking declaratory relief over the property of the plaintiff. It was dismissed by the trial Court with the observations that trial already commenced and almost at the fag end the amendment cannot be allowed. As per the expressions of this Court in **Mareddy Seetharathnam v. Siruvuri Venkatarama Raju**¹ where particularly at Para 6(a)(x) referring to the expression of the Apex Court in **Sampath Kumar v. Ayyakannu**², though due diligence is one of the important considerations, that is not the be and end all, but for other considerations also are as required to be taken note of by the Court in permitting or not to permit the amendment, particularly of there is any change of cause of action and any prejudice being caused to the other side .

3. Having regard to the above, the amendment of the additional written statement to take the additional plea is permitted as the very

¹ 2016 SCC Online Hyd 352

² (2002) 7 SCC 559

entitlement the plaintiff has to establish, for the Court even in a suit for bare injunction incidentally has to go into the title and defendant is entitled to dispute the said entitlement including as to the title.

4. Accordingly, the civil revision petition is allowed permitting the amendment subject to costs of Rs.1,000/- (Rupees one thousand only) to the Army Welfare Fund, payable on or before 04.06.2018 and file the proof before the trial Court.

Miscellaneous petitions pending, if any, shall stand closed.

1st May 2018.

mar

Dr. B. SIVA SANKARA RAO, J

