

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1007 of 2015

ORDER:

The civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.967 of 2012 in O.S.No.893 of 2009 dated 23.10.2013 passed by the II Additional Junior Civil Judge, Ranga Reddy District, whereby, the petition filed under Order VI Rule 17 of Code of Civil Procedure (for short "C.P.C.") was allowed.

Respondent Nos.1 to 3 herein filed a suit for perpetual injunction against the petitioners herein and after filing the affidavit on 15.02.2012 under Order XVIII Rule 4 of C.P.C. in lieu of examination-in-chief of P.W.1 and marking of Exs.A.1 to A.14, the present application under Order VI Rule 17 of C.P.C. was filed on 21.12.2012 seeking leave of the Court to add para 8 (a) to 8 (m) after para No.8, para No.10 (a) to 10 (f) after para No.10 and para No.12 (a) to 12 (f) after para No.12 and adding a (i) to a (vi) in the relief portion and schedule 'A' to schedule 'C' property after schedule of property, on the ground that the petitioners herein encroached the property and denied the title of the respondents herein. Therefore, it necessitated the respondents herein to seek declaration of title to the property and recovery of possession and mandatory injunction for demolition of the construction.

Petitioners herein filed counter denying the material allegations while contending that the respondents herein are not entitled to claim relief under Order VI Rule 17 of C.P.C. after P.W.1 was examined in chief and marked Ex.A.1 to 14.

Upon hearing argument of both the counsel, the Court below ordered the petition filed under Order VI Rule 17 of C.P.C.

Aggrieved by the order of the trial Court, the present revision is filed on the ground that as per proviso to Order VI Rule 17 of C.P.C. the amendment cannot be allowed and the proposed amendment would change the nature of suit, and the trial court committed an error in ordering the petition for amendment by exercising power under Order VI Rule 17 of C.P.C.

Learned counsel for the petitioners contended that after filing the suit, the petitioners herein filed their written statement on 31.08.2007, later issues were framed and P.W.1 filed affidavit under Order XVIII Rule 4 of C.P.C. in lieu of examination-in-chief on 15.02.2012 and marked Exs.A.1 to A.14, but the present petition was filed after commencement of trial. Therefore, the respondents have to satisfy the Court that in spite of exercise of due diligence, earlier they could not have raised the pleas (raised in the proposed amendment), in the absence of satisfying the Court about exercise due diligence, the respondents herein are not entitled to claim relief under Order VI Rule 17 of C.P.C., and the Court below did not record any satisfaction while allowing the

application and totally ignored the proviso to Order VI of C.P.C., which is added by Act 22 of 2002 and passed the impugned the order.

Learned counsel for the respondents supported the order of the trial Court while placing reliance on the judgment of this Court rendered in “**Bhanoth Mangamma v. Chitla Ram Reddy**”¹ and the judgment of Apex Court rendered in “**Mohinder Kumar Mehra v. Roop Rani Mehra**”²

It is an undisputed fact that the written statement in the suit was filed by the petitioners herein on 31.08.2007 and the respondent No.1 herein was examined as P.W.1 on 03.03.12 and Exs.A.1 to A.14 were marked in the evidence of P.W.1. When the suit was posted for cross-examination, petition under Order XXIII Rule 1 of C.P.C. was filed seeking permission to withdraw the suit with permission to file comprehensive suit for declaration, which ended in dismissal. Later, the present petition is filed under Order VI Rule 17 of C.P.C. to amend the plaint converting the suit for injunction simplicitor into comprehensive suit for declaration and other consequential reliefs.

The entire affidavit is silent as to exercise of due diligence as required under Order VI Rule 17 of C.P.C. On the other hand, the respondents herein are aware of the formal defect in the suit and filed petition under Order XXIII Rule 1 of C.P.C. seeking

¹ 2013 (5) ALT 77

² 2017 (14) Scale 223

withdrawal of suit with permission to file fresh suit, despite knowledge about the defect, they did not choose to file appropriate application under Order VI Rule 17 of C.P.C. and the conduct of the petitioners in filing petition under Order XXIII Rule 1 of C.P.C. and filing the present petition after dismissal of earlier application itself indicates that the respondents herein did not exercise due diligence, but the trial Court did not advert to the proviso to Order VI Rule 17 of C.P.C. and simply passed the order granting leave to amend the plaint on the ground that the petitioners herein will have opportunity of filing additional written statement disputing the amended prayer.

No doubt, the proposed amendment is only to convert the suit for injunction simplicitor to declaration and there is no bar to allow such amendment in view of the law declare by this Court in “**Bhanoth Mangamma v. Chitla Ram Reddy**” (referred supra). In the said judgment, this Court did not consider the effect of proviso to Order VI Rule 17 of C.P.C. Therefore, the judgment relied on by the learned counsel for the respondents has no application directly to the dispute in question.

Learned counsel for the respondents also relied on “**Mohinder Kumar Mehra v. Roop Rani Mehra**” (referred supra), in paragraph No.13 of the said judgment, the Apex Court held that the proviso to Order VI Rule 17 of C.P.C. prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading

of evidence, no new pleading be permitted to be introduced. In the facts of the above judgment, before the parties lead evidence, amendment application was filed and thereafter affidavit was filed. But the facts of the present case are totally different and the petition was filed only after examination of P.W.1 and marking documents Exs.A.1 to A.14. Based on the facts of the above judgment, the Court permitted to amend the plaint more particularly evidence was not commenced. But the situation is totally different and at the cost of repetition it is clear from the record that P.W.1 filed his affidavit under Order XVIII Rule 4 of C.P.C. on 15.02.2012 and marked Exs.A.1 to A.14 on 03.03.2012, but the cross-examination was not completed due to filing of other application under Order XXIII Rule 1 of C.P.C., but after dismissal of the said application only, the present application under Order VI Rule 17 of C.P.C. filed.

Therefore, the respondents herein are not entitled for relief under Order VI Rule 17 of C.P.C. since the trial has already been commenced by the date of filing of petition, but the trial Court did not look into the impact of Proviso to Order VI Rule 17 of C.P.C. while deciding the petition filed under Order VI Rule 17 of C.P.C. and committed an error in ordering amendment. Hence, the order of the Court below is hereby set aside while directing the parties to proceed with the trial based on the original pleadings.

In the result, the civil revision petition is allowed setting aside the order in I.A.No.967 of 2012 in O.S.No.893 of 2009 dated

23.10.2013 passed by the II Additional Junior Civil Judge, Ranga Reddy District. No costs.

The miscellaneous petitions pending in all the three revisions, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

22.02.2018
Ksp

