

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRP No.4032 of 2017

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 28.04.2017 passed in I.A.No.589 of 2016 in O.S.No.480 of 2012 on the file of the Court of the Additional Senior Civil Judge, Narsaraopet.

2 Heard the learned counsel for both parties.

3 The respondent filed O.S.No.480 of 2012 against the petitioner for declaration and recovery of possession of the suit schedule property. Pending suit, the respondent filed a petition under Order VI Rule 17 CPC seeking amendment of the plaint. The petitioner filed counter opposing the claim of the respondent. The trial court, after affording a reasonable opportunity to both parties, allowed the petition. Hence the present Civil Revision Petition.

4 The point that arises for consideration is “whether there is any illegality, irregularity or impropriety in the impugned order?”

5 Both counsel with one voice submitted that the respondent filed the petition under Order VI Rule 17 CPC after commencement of the trial. It is needless to say that a party to the proceedings, who seeks amendment of the pleadings, has to satisfy the ingredients of proviso to Order VI Rule 17 CPC. The trial court in Para No.12 of the order made inconsistent observations. It appears that the trial court passed the impugned order without taking into consideration the scope of Order VI Rule 17 CPC. Therefore, the impugned order is not sustainable either on facts or in law.

6 Having regard to the facts and circumstances of the case and nature of the suit, this Court is of the considered view that this is a fit case to allow the Civil Revision Petition and remand the matter to the trial Court for fresh disposal.

7 In the result, the Civil Revision Petition is allowed, the order dated 28.04.2017 passed in I.A.No.589 of 2016 in O.S.No.480 of 2012 on the file of the Court of the Additional Senior Civil Judge, Narsaraopet is hereby set aside, remanding the matter to the trial Court. The trial court is hereby directed to dispose of I.A.No.589 of 2016 afresh, after affording a reasonable opportunity to both parties, keeping in mind the proviso to Order VI Rule 17 CPC. No order as to costs. As a sequel, miscellaneous petitions, if any pending in this Civil Revision Petition shall stand closed.

Date: 28.11.2018

Kvsn

T.SUNIL CHOWDARY, J

