

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.567 of 2015

ORDER:

The present Civil Revision Petition, filed under Article 227 of the Constitution of India, is directed against the order dated 28.11.2014 in I.A. No.184 of 2013 in O.S. No.196 of 2006 on the file of Principal Junior Civil Judge, Madanapalle, rejecting the request to amend the plaint seeking declaration of title over the plaint schedule property and dismissed the application.

2. Heard Sri S.V. Soundara Rajan, learned counsel for the petitioner, and Sri M.N. Narasimha Reddy, learned counsel for the respondent.

3. The main submission of the learned counsel for the petitioner is that originally the suit was filed for declaration that the defendant has no right and title to one-fourth share in the plaint schedule property and for permanent injunction restraining the defendant and his men from interfering with plaintiff's peaceful possession and enjoyment over the plaint schedule property and subsequently since the plaintiff was advised to amend the plaint to avoid technicalities to seek declaration of his title for the entire extent of plaint schedule property besides declaration already sought he made a request accordingly. It is his submission that the Court below somehow, went wrong in negating the request though, the entire character of the suit will not change even if the present relief sought

for by way of amendment is introduced, and, therefore, to set aside the order under challenge.

4. Learned counsel for the respondent would strongly resist the request contending that the relief sought for was only to declare that the defendant has no right over one-fourth share and now cannot introduce a new relief of declaration at the stage when the suit was coming up for reply arguments and, therefore, the mandate of provisions of Order VI Rule 17 of Civil Procedure Code, 1908 (for short, 'C.P.C.') would prohibit the amendment being introduced at this stage unless it is absolutely indispensable to permit the amendment sought for.

5. Perused the order passed by the Court below. Learned trial Court referred to the rulings relied on by the learned counsel for the petitioners in **Pankaja & Anr. Vs. Yellappa (dead) by LRs. & ors.** (AIR 2004 SC 4102) and **Abdul Rehman Vs. Mohd. Ruldu** [(2012) 11 SCC 341], and also referred to the rulings in **P. Durga Reddy v. B. Yadi Reddy** (2014 (2) ALT 526) and **Shaik Subhani v. Sagamreddy Nagamani** (2011 (5) ALT 562) to the effect that no amendment can be allowed after commencement of trial unless the Court comes to the conclusion that the party could not have raised the matter before commencement of trial in spite of due diligence as per proviso of Order VI Rule 17 of C.P.C. and then referred to the stage of the suit and observing that no explanation was offered by the petitioner for taking steps to get amended the plaint seeking positive

relief earlier, even though, he has knowledge that his title is denied by the defendant and opining that the amendment virtually takes away the right of the defendant and the relief which is now sought to be introduced by way of amendment is barred by limitation dismissed the application.

6. It is no doubt true the cardinal principle is, to avoid multiplicity of proceedings an amendment can be permitted, but, whether the said principle can be applied to the fact situation occurring herein. The plaintiff sought negative relief requesting the Court to declare that the defendant has no title to one-fourth share in the plaint schedule property and for consequential perpetual injunction. Two relevant issues amongst other issues, already settled for trial, were referred to in the affidavit filed by the petitioner. They are, thus:

“(1) Whether the Court fee paid is correct?”

(2) Whether the relief portion is properly framed?”

7. The petitioner claims that entire evidence is already adduced even in regard to the relief sought for through the proposed amendment and there would not be any prejudice to the defendant in case amendment is ordered.

8. When looked at, the stage of proceedings of the suit, the suit is at the stage of reply arguments. As rightly observed by the Court below, the stand taken by the defendant was known to the

plaintiff even by the date of settlement of issues. Maintaining silence throughout and coming up only at the stage of reply arguments, the present request appears to be unreasonable. This apart, when examined whether the nature and character of the suit would be changed or not, positive relief sought to be introduced certainly, would change the nature and character of the suit. Therefore, it is impermissible to accede to the relief, now sought for by the petitioner. There is no merit in the present Civil Revision Petition.

9. Hence, the Civil Revision Petition is dismissed. However, the petitioner is not precluded from seeking the relief now sought to be introduced by way of amendment, if he so chooses by way of separate proceedings. The parties shall bear their own costs.

As a sequel thereto, miscellaneous petitions if any pending in the Civil Revision Petition shall stand closed.

A.SHANKAR NARAYANA

Dt. 27.04.2018
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