

THE HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

Civil Revision Petition No.2787 of 2018

Order:

This Court has heard both the learned counsel for the petitioner and learned counsel for the respondents.

This CRP is filed against the order and decretal order dated 10.04.2018 passed in IA No.1108 of 2017 in OS No.138 of 2011 on the file of the Principal Junior Civil Judge, Bobbili.

The petition in IA No.1108 of 2017 in OS No.138 of 2011 is filed under Order VI Rule 17 CPC to amend the plaint.

The suit was initially filed for permanent injunction restraining the defendants from interfering with the plaint schedule property. The defendants filed their written statement and in their written statement they pleaded that the first defendant had constructed according to his sale deed measurements. Therefore, the contention of the learned counsel for the petitioner is that the written statement was filed in October 2011 and since then the respondents/plaintiff were aware of the existence of the constructions. Therefore, they contend that the application is belated. On the other hand, the contention of the learned counsel for the respondents/plaintiffs is that only after Commissioner's report was filed and the commissioner noted the measurements and dimensions of the property, they were aware of the constructions being made in the rasta. Therefore, they have filed the application for amendment of plaint 'B' schedule property, which is a part of plaint 'A' schedule property, and they described the property as follows. "Nature of Property: Newly constructed

portion in plaint schedule Rastha". Learned counsel pointed out that in view of the subsequent developments, the respondents/plaintiffs were constrained to file the application for amendment; to add the prayer for mandatory injunction, to remove the said illegal construction and to describe the plaint 'B' schedule in which construction is made with clarity.

The lower Court also held that a perusal of the commissioner warrant shows that it was executed on 22.10.2017. Therefore, pursuant to the Commissioner warrant only the respondents came to be aware of the actual constructions. This Court, after hearing both the learned counsel, noticed that the amendment that is sought for describes the 'B' schedule as the newly constructed portion in the plaint 'A' schedule. Considering the Commissioner's report, the lower Court directed the amendment of the plaint.

Learned counsel for the petitioner stated that the application is filed to defeat their rights. He also argued that after great delay the application is filed. Learned counsel for the respondents/plaintiffs submits that no irreparable loss would be caused to the petitioner, as he was given reasonable opportunity to file a detailed written statement which is already in the record. Both the learned counsel agreed that in the additional written statement they have already raised the plea of limitation; etc.

This Court is of the opinion that no irreparable loss will be caused to the petitioner. The amendments are clarificatory. The revision petitioner will have an opportunity to contest the suit including the

amendment and prayer sought for on merits. Hence, this Court finds no merits in the revision petition.

Accordingly, the CRP is disposed of giving liberty to the petitioner herein to raise all the pleas that are available to him under law in opposition to the amended plaint. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this CRP shall stand closed.

D.V.S.S. SOMAYAJULU, J.

Date: 13.07.2018
Nsr



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