

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.2499 and 2501 of 2018

COMMON ORDER:

1) C.R.P.No.2499 of 2018 is filed, aggrieved by the order dated 28.03.2018 passed in I.A.No.610 of 2016 in O.S.No.173 of 2012 on the file of the Principal Junior Civil Judge, Peddapuram, wherein an application made under Order VI Rule 17 of C.P.C., to amend the plaint was dismissed.

2) C.R.P.No.2501 of 2018 is filed aggrieved by an order dated 28.03.2018 passed in I.A.No.611 of 2016 in O.S.No.173 of 2012 on the file of the Principal Junior Civil Judge, Peddapuram, wherein an application filed under Order I Rule 10 of C.P.C. to add respondents 2 to 4 as defendants 2 to 4 in the suit was dismissed.

3) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are being disposed of by this common order.

4) The facts in issue are as under:

The petitioner/plaintiff filed O.S.No.173 of 2012 seeking permanent injunction basing on an un-registered sale deed dated 14.05.1983. It is stated that the father of the defendant executed an un-registered sale deed pertaining to land admeasuring Ac.0.84 cents out of total extent of Ac.21.24 cents

in Sy.No.290/ 1 of K.Gopalapuram Village. When the 1st respondent tried to interfere with the property, the petitioner filed the above suit. A written statement came to be filed by the defendant denying the averments and also disputing the execution of the un-registered sale deed. Long thereafter, I.A.No.610 of 2016 came to be filed stating that a day prior to filing of the application, the petitioner could trace out a agreement of sale dated 30.04.1987, executed by the father of the defendant, and as such filed an application seeking amendment of the prayer from specific performance of agreement of sale to declaration. Along with the said petition, I.A.No.611 of 2016 also came to be filed seeking impleadment of the wife, son and daughter of Pasumarthi Venkata Raju, who executed the agreement of sale dated 30.04.1987. Refusing to accept the request for impleadment of the other legal heirs of Pasumarthi Venkata Raju and for amendment of the plaint, the present Civil Revision Petitions came to be filed.

5) Learned counsel for the petitioner would submit that the mistake which has occurred can be rectified at any stage by amendment of the plaint and that great prejudice would be caused to the petitioner if the proposed parties are not impleaded in the suit and the prayer in the suit is not amended.

6) On the otherhand, learned counsel for the respondent would submit that by amending the relief, the entire cause of action in the suit is changed and there is also any amount of

doubt as to execution of the agreement of sale dated 30.04.1987. He further submits that the proposed parties are not necessary parties to the suit.

7) In order to appreciate the same, it is to be noted that O.S.No.173 of 2012 was filed for permanent injunction against the sole defendant. The un-registered sale deed dated 14.05.1983 which was made the basis for filing suit was not filed along with the suit. Strangely, without looking into the un-registered sale deed ad-interim temporary injunction appears to have been granted. Later, the present applications came to be filed, for amendment of the plaint seeking specific performance of agreement of sale dated 30.04.1987 executed by the father of the sole defendant and another for impleading the other legal representatives of the executant of the agreement of sale dated 30.04.1987.

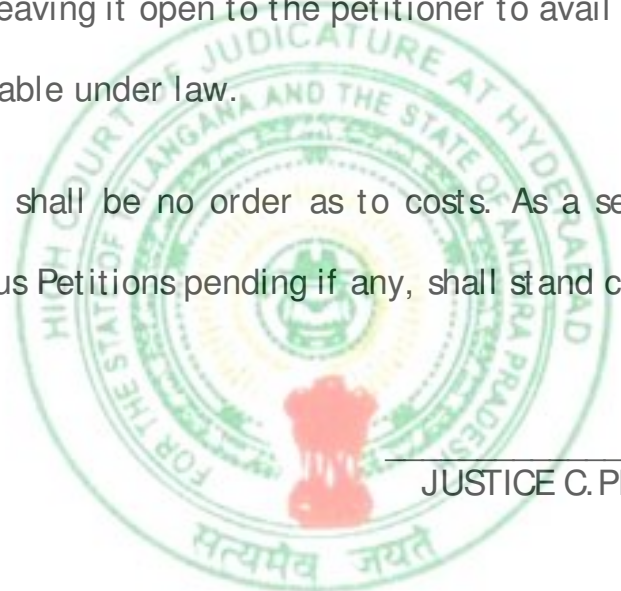
8) A reading of the affidavit filed along with the petitions would show that a day prior to filing of the application, the agreement of sale dated 30.04.1987 was traced, which made the plaintiff to seek amendment of the plaint from permanent injunction to specific performance of agreement of sale dated 30.04.1987 and for impleading proposed parties as defendants in the suit. From a reading of the plaint and also the agreement of sale dated 30.04.1987, it appears that the location of the property is also changed. The plaint schedule property is located

in K.Gopalapuram Village, where as the schedule property in agreement of sale is located in Mallepalli village.

9) Having regard to the above, I feel that allowing such amendment, the entire cause of action changes. As the properties mentioned in the schedule are also different, I am not inclined to accept the request of the petitioner seeking amendment of the plaint.

10) Accordingly, both the Civil Revision Petitions are dismissed, leaving it open to the petitioner to avail the remedies, if any, available under law.

11) There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.



JUSTICE C. PRAVEEN KUMAR

20.07.2018
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