

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 3416 of 2018

ORDER:

Aggrieved by the order, dated 08.01.2018, in I.A.No.107 of 2017 in O.S.No.2 of 2015 passed by the learned Junior Civil Judge, Achampet, the present Civil Revision Petition is filed.

It is the case of the petitioner that he filed the suit against the respondent-defendant seeking perpetual injunction restraining the respondent from interfering with the peaceful possession and enjoyment of the plaint schedule property lands bearing Sy.No.539/A over an extent of Ac.3-34 guts, situated in Lingotam Village limits of Achampet Mandal. It is the further case of the petitioner that in and around 25.01.2017, during the pendency of the suit, the respondent had constructed a compound wall around the suit schedule and by opening a gate to the said compound wall and the construction of the compound wall has happened after filing of the suit. The said aspect could not be pleaded by the petitioner. Inasmuch as the respondent had unlawfully, by trespassing into the petitioner's land, constructed the compound wall, it has become necessary to amend the plaint seeking a mandatory injunction in spite of permanent injunction, as originally prayed.

A counter affidavit is filed by the respondents in the I.A. In the said counter affidavit, it has been stated as follows:

“I submit that this petition is not maintainable either in law or in facts. That the petitioner filed this petition to amend her plaint after filing the written statement by the respondent /defendant by stating that the suit schedule property is not an agricultural land and mover ever the defendant purchased some

portion old suit schedule land and got constructed a house in it and the G.P. Lingotam allotted house No.3-19 long back. After filing the written statement the same facts. That the respondent/defendant also filed a petition to advocate commissioner to note down the physical features of suit schedule land. But the same is pending. That by knowing all the facts the petitioner filed this petition with false and created stories and with created cause of action. As such the Hon'ble Court has got ample and wide power to dismiss the petition, otherwise I will be put to irreparable loss and hardship.

Under the circumstances mentioned above it is therefore just and necessary and proper to dismiss the petition with costs, in the interest of the justice."

Learned Junior Civil Judge, after extracting the respective contentions, had dismissed the I.A. holding as follows:

"Therefore, it is clear that, if the proposed amendment is allowed, it not only cause prejudice to the respondent who already submitted his case in detail through his written statement as this proposed amendment will change the entire nature of the suit."

The reasoning adopted by the Junior Civil Judge is not in conformity with the ingredients, which are required to be considered in an Application made invoking Order VI Rule 17 of C.P.C and the judgments of the Courts holding that amendment of pleadings can be done, at any stage, subject to certain limitations. The limitation, which has been placed in Order VI Rule 17 is that if the trial has already commenced, the Court is required to be satisfied that in spite of the exercise of due diligence the party could not have raised the plea before the commencement of the trial. In the present case on hand, the plea taken by the petitioner-plaintiff is that a compound wall came to be constructed around

the suit schedule land i.e. over an extent of Ac.3.37 guntas. It was also further stated the said construction was made in and around 25.01.2017 and the Application came to be filed on 25.07.2017, within two months from the date of noticing the alleged construction of compound wall. It is not in dispute, as of now, the trial has not commenced. Hence, even the proviso under Order VI Rule 17 also would not come into play. In those circumstances, the order dated 08.01.2018 of the learned Junior Civil Judge is set aside and I.A.No.107 of 2017 is allowed. However, it is made clear, the Court below is required to consider the effect of allowing the amendment both with respect to the valuation, Court Fees and jurisdiction of the Court.

- 3) Accordingly, the Civil Revision Petition is allowed. No costs.
- 4) Consequently, the Miscellaneous Applications pending, if any, shall stand closed.

Date: 13.12.2018

Ssv

CHALLA KODANDA RAM, J

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM



CIVIL REVISION PETITION No. 3416 OF 2018

Date:13.12.2018

Ssv