

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

C.R.P.NO.1766 OF 2015

ORDER:-

The revision petition is filed questioning the order, dated 24-10-2014 passed in I.A.No.369 of 2014 in O.S.No.749 of 2012 on the file of the court of II Additional Senior Civil Judge, Kakinada.

2. I.A.No.369 of 2014 is filed under Order VI Rule 17 CPC r/w. Rule 28 of the Civil Rules of Practice for amendment of the plaint by inserting Paras.16-A and 16-B and also the valuation para.

3. The suit was initially filed for declaration that the right title, interest and possession of the plaintiff over the plaint "A" suit schedule property are not disturbed and that the executing proceedings and delivery proceedings in E.A.No.490 of 2012 in E.P.No.95 of 2011 in O.S.No.135 of 2010 do not effect or bind the interest of the plaintiff. No relief of recovery of possession was sought and permanent injunction was also sought in favour of plaint "A" schedule property. Thereafter, the present application I.A.No.369 of 2014 was moved seeking for amendment. The same was contested by the respondents. After hearing both sides, the impugned order came to be passed by the court below.

Questioning the same, the present Civil Revision Petition is filed.

4. This court has heard Sri A.K.Kishore Reddy, learned counsel for the revision petitioner and Sri P.Srinivasa Rao, learned counsel for the respondents.

5. The learned counsel for the petitioner points out that the question of recovery of possession that is now sought by the petitioner is at direct variance with the pleadings in the plaint. The learned counsel submits that in para.11 of the plaint, the plaintiff clearly stated that she is in possession and enjoyment of the suit schedule property as her own and she also points that in I.A.No.369 of 2014 in para.4 it is averred very specifically that she is in possession pursuant to her ownership rights. Therefore, the learned counsel submits that in view of the clear and categorical averments in the plaint and in the interlocutory application that the plaintiff is in possession of the property, she cannot seek the relief of recovery of possession.

6. In reply thereto, the learned counsel for the respondent submits that a reading of the entire plaint shows that while the petitioner did claim possession of the property by virtue of her title, she also pleaded that delivery proceedings said to have been effected in favour of the defendants are not lawful. He points out that in para.11

of the plaint, the plaintiff has clearly stated that she has filed objection petition to the delivery proceedings in the executing court, vide SR No.5412, dated 28-09-2012 and that the same was returned by the court below. It is also pointed by the learned counsel that the court officers did not do anything physically on the land and went away without proclaiming with delivery by *tom tom* etc., and did not revisit the property. The further pleading that the officers did not deliver the plaint schedule property to the 1st defendant and merely recorded a paper delivery is also highlighted by the learned counsel. He also submits that the application filed is only a clarificatory and to prevent the multiplicity of the proceedings. Therefore, the learned counsel submits that there is no wrongful exercise of jurisdiction by the court below.

7. This court notices that the lower court considered the judgment of this court in *Chinnapareddy Subba Reddy vs. Chinnapareddy Srinu and Others*(¹) wherein it is held that if the relief of possession is not barred by limitation, the same can be ordered to be included in the relief portion by way of an amendment. In the case on hand, the delivery is supposedly effected on 24-09-2012 and the suit is filed soon thereafter. Therefore, bar of limitation will not apply as rightly held by the court below.

¹ 2013(4) ALT 319

8. The next question survives for consideration is whether in view of the averments in the plaint that the petitioner/plaintiff is in possession of the property where she can seek redelivery of the possession?. A reading of the entire plaint makes it clear that the plaintiff asserts that she is in possession and that the so-called delivery effected in favour of the defendants is a mere paper delivery. Her contention is that the relief of possession is being sought by way of an abundant caution in order to obviate the further contingencies. This court is also of the opinion that if the plaintiff succeeds in the case in the lower court and declaration is in fact granted as prayed for on the merits of the matter, she will be left remediless, if the possession is not ordered to be redelivered. Therefore, in order to prevent the multiplicity of proceedings, this court is of the opinion that the amendment that is sought would be necessary particularly to do complete justice to both the parties. This court also notices that this is a pretrial amendment and counsel for the respondents also points out that the revision petitioner has already filed a written statement. Even otherwise by virtue of amendment the revision petitioner will not sustain any loss as the entire aspect of whether the delivery is an actual delivery or a paper delivery can be decided during the course of trial. Therefore, no injustice or impediment will be caused to the

revision petitioner as she will have an opportunity to contest the same. On the other hand, if the relief of possession is not included in the plaint and the suit is decreed in favour of the plaintiff, she will be left remediless. Therefore, in order to completely and effectively adjudicate the dispute between the parties and to prevent the multiplicity of proceedings, this court is of the opinion that the impugned order passed is correct and there are no merits in the revision petition warranting interference.

Accordingly, the Civil Revision Petition is dismissed. No costs. The interlocutory applications pending, if any, shall stand closed in consequence.

28-11-2018
TSNR

D.V.S.S.SOMAYAJULU,J

