

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

CIVIL REVISION PETITON NO. 1700 OF 2015

ORDER:

This revision is filed questioning the order, dated 04-12-2014 passed in I.A.No.1752 of 2014 in O.S.No.20 of 2007 passed by the Principal District Judge, Vizianagaram.

2. The suit O.S.No.20 of 2007 was filed by Sri Sai Umamaheswara Trust (hereinafter referred to as "the trust") and others seeking the relief of physical possession of the properties; for grant of permanent injunction etc. The suit, as can be seen from the number given, was filed in the year 2007. In the year 2014, I.A.No.1752 of 2014 was filed seeking to amend the plaint. The prayer sought in the application was to give a declaration that the 1st plaintiff-Trust is the absolute owner of the suit schedule properties and is entitled to delivery of suit schedule properties. In addition, the words 'that the plaintiff is a public trust' were sought to be deleted and in its place the petitioner wanted to insert the words 'the plaintiff is a trust'. Therefore, the application is made seeking a declaration that the 1st plaintiff is the owner of the property and also stating that the 1st plaintiff is merely a trust.

3. The respondents filed a very detailed counter and opposed the application. Both the proposed amendments

were seriously opposed. After hearing both the learned counsel, the impugned order was passed by which the application was rejected. Questioning the same, the present revision petition is filed.

4. This Court has heard both the learned counsel.

5. The learned counsel for the petitioners submits that the amendment is a pre-trial amendment and, therefore, the same should be liberally construed. The learned counsel submits that the scope and nature of the suit are not changed and that by allowing the application the court would be able to pronounce a comprehensive and a clear judgment by adjudicating all the issues involved and thereby the multiplicity of proceedings can be prevented. The learned counsel also submits that the words “public trust” were unnecessarily added and the 1st plaintiff is merely a “trust”. Therefore, the learned counsel for the petitioners submits that the amendment should be allowed. The learned counsel also submits that the suit was filed for declaration and the same is also mentioned in the plaint and, therefore, there is no change in the cause of action as alleged. His contention is that the application for amendment must be ordered.

6. On the other hand, the learned counsel for the respondents argued that altogether a new case was sought

to be set up. The suit, as originally filed, is only for a recovery of possession. Today, an amendment is sought, as per the learned counsel for the petitioners, for declaration of title. The learned counsel submits that the relief is hopelessly barred by time. In addition, the learned counsel submits that the suit is filed for recovery of possession and not for a declaration that the 1st plaintiff-trust is a public religious charitable trust as described in the plaint and altogether a new relief of declaration of title is now sought. This is a new cause of action as per the counsel for the respondents. In addition, the learned counsel also submits that the claim is barred by limitation. The learned counsel also points out that the averments in the plaint are to the effect that the plaintiffs are the owners of the property and the same was forcibly occupied as per the cause of action paragraph. Therefore a relief of possession only was sought. In addition, the learned counsel also draws the attention of this court that in para(f) it is pleaded that the defendant Nos.1 to 4 have sold away the suit schedule properties without having any manner of right, title or possession to the third parties under a registered sale deeds, dated 28-11-2011. The purchasers were also added to the suit. As per the orders of the court in April, 2012. Therefore, the learned counsel for the respondents submits that an altogether a new plea is now

sought to be introduced as the same is contrary to the settled law on the subject.

8. This court after hearing both the learned counsel notices that: (a) that the pleadings in the plaint do not lay down a foundation for a declaration of "title" as sought to be contended by the learned counsel for the petitioners. The only declaration that is mentioned in the plaint can be found in para.3 (e) wherein it is stated that the suit is filed for declaration that the 1st plaintiff-trust is a public religious charitable trust and that the plaintiff is entitled to physical possession of the property; and (b) it is also pertinent to note that in the next para.3 (f) itself, the sale made by the defendants in favour of the new purchasers is highlighted. The purchasers were also added as per the orders, dated 13-04-2012, as can be seen from the plaint but no relief of cancellation of the deeds is sought nor are the sale deeds attacked as being void per se etc.

9. In addition, this court also notices that no reason is furnished for seeking the amendment by introducing the plea that 'the plaintiff is a trust and not a public trust'. Further, this court also notices that altogether a new cause of action is now sought to be set up. The suit for recovery of possession that is filed, is now sought to be converted into a suit for declaration of title. A cloud over the title was

also raised earlier. The fact that the properties were sold to the third parties is also mentioned in the amended plaint. Para.3 (e) of the plaint clearly states that the defendants have made attempts to appropriate the properties. It is also stated that the defendants have approached the Revenue Department for obtaining a pattadar passbooks and also for ROR books. Therefore, the attempts as described in the plaint and the sale deeds executed by defendant Nos.1 to 4 as mentioned in para.3(f) clearly show that there was a dispute and a cloud over the title also. Prior to the suit itself attempts were made by the defendant Nos.1 to 4. During the pendency of the suit, sale deeds were executed in November-2011 as per the amended pleadings. Despite being aware of all these facts, the suit for declaration of title was not filed and the plaintiffs continued with the suit for recovery of possession only. Therefore, this court is of the opinion that the plea is hopelessly barred by time. In addition altogether a new cause of action is sought to be set up. A new relief is being claimed which is totally different from the relief that is already claimed. Further, the introduction of the deletion of the word 'public trust' and the relief of declaration that is now sought would alter the very nature of the suit.

10. For all these reasons, this court is of the opinion that the lower court did not commit any error in passing the

order which is impugned in this revision. Therefore, this court is of the opinion that there are no merits in the revision.

11. Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

Date: 31-12-2018
TSNR

D.V.S.S.SOMAYAJULU,J

