

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No.3807 of 2018

ORDER : (Oral)

Vide the present petition, petitioner has challenged the order dated 19th March 2018, passed in I.A.No.603 of 2017 in O.S.No.354 of 2015, whereby, the petition filed by the 1st respondent/plaintiff under Order VI Rule 17 read with Section 151 CPC for amendment of plaint, has been allowed.

2. Learned counsel appearing on behalf of petitioner submits that after the trial has been commenced, the 1st respondent/plaintiff chose to file the amendment petition to amend the plaint for declaration and also permit him to pay required Court fee. At that stage, the petitioner chose to file counter and raised an objection stating that plaint cannot be amended at the stage of trial as per the amendment made to Order VI Rule 17 CPC, which clearly says that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the

party could not have raised the matter before the commencement of trial.

3. Learned counsel for petitioner further submits that after filing of his counter, the trial Court, instead of hearing both sides, deliberately allowed the amendment petition on 19th March 2018, basing on the injunction petition, which was allowed.

4. The fact remains that the notice was issued in the petition filed under Order VI Rule 17 r/w. Section 151 CPC, and only thereafter, the impugned order dated 19th March 2018 has been passed. While allowing the aforesaid application, the learned trial Court has observed that the petitioner/defendant is claiming right over the plaint schedule property and there is a rival claim regarding the suit schedule property. In the said circumstances, the 1st respondent/plaintiff has brought the amendment petition in order to prevent multiplicity of proceedings.

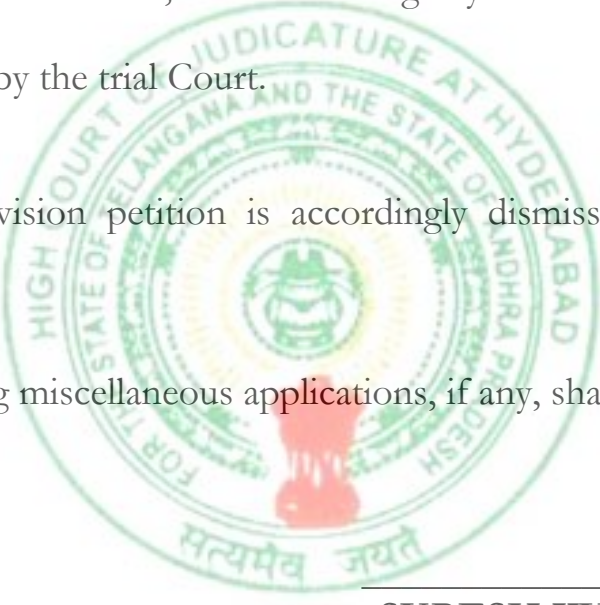
5. Added to the above, the 1st respondent/plaintiff, inspite of due diligence, could not have raised the plea of declaration at the earliest point of time as the 1st respondent/plaintiff has thought that injunction simpliciter is suffice, but he came to know only during the course of cross-examination of PW-1 the said aspect of title dispute. Hence, he immediately filed this application.

6. It is not in dispute that the amendment is normally not allowed after the commencement of trial. However, if the Court feels that there will be multiplicity of litigation or it is necessary to adjudicate the petition, the trial Court has power to allow the amendment. In the present case also, the learned trial Court has observed that to avoid multiplicity of litigation, it is necessary to allow the amendment under Order VI Rule 17 of CPC.

7. In view of above, I find no illegality or discrepancy in the order passed by the trial Court.

8. The revision petition is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.



SURESH KUMAR KAIT, J

6th July 2018

ajr