

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.3112 of 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 04.05.2018 passed in I.A.No.319 of 2016 in O.S.No.77 of 2008 on the file of the Court of Junior Civil Judge, Narayanapet.

2. In spite of service of notice, none appeared on behalf of respondents 1, 3, 4 and 5. Heard the learned counsel for the petitioner and the learned Government Pleader for Arbitration, representing the second respondent.

3. The facts leading to filing of the present revision petition are briefly as follows:

The petitioner filed I.A.No.319 of 2016 in O.S.No.77 of 2008 under Order VI Rule 17 CPC seeking amendment of the plaint. The respondents filed counter *inter alia* contending that the petition is not maintainable under law. After affording a reasonable opportunity to both parties, the Court below dismissed the petition. Hence, the revision.

4. The point that arises for consideration is whether there is any illegality or irregularity in the order of the Court below?

5. A perusal of the record reveals that the petitioner filed O.S.No.77 of 2008 on the file of the Court of Junior Civil Judge, at Narayanpet, against the respondents seeking perpetual injunction in respect of the suit schedule property. During

pendency of the suit, the petitioner filed I.A.No.54 of 2016 seeking amendment of the plaint. The Court below dismissed the said petition. Feeling aggrieved by the orders of the Court below, the petitioner preferred C.R.P.No.3452 of 2016 and the same was allowed on 22.07.2016 by granting opportunity to the petitioner to file fresh application. In pursuance of the orders of this Court, the petitioner filed I.A.No.319 of 2016 under Order VI Rule 17 CPC seeking amendment of the plaint to permit the petitioner to seek the relief of declaration and recovery of possession of the suit schedule property. The trial Court dismissed the petition on two grounds: (1) the period of limitation for filing of suit for recovery of possession is three years and (2) the petitioner filed the present petition after lapse of 7½ years of filing of the suit.

6. The learned Government Pleader for arbitration in all fairness submitted that the finding of the Court below that the period of limitation is three years for filing of suit for recovery of possession is not sustainable. The pre-dominant contention of the learned Government Pleader for Arbitration is that the petitioner has not taken reasonable care for filing of the amendment petition.

7. As observed above, the petitioner earlier filed I.A.No.54 of 2016 for amendment of the plaint. The learned Government Pleader for Arbitration has drawn the attention of this Court to the averments made in the plaint. In order to appreciate the contention of the learned Government Pleader, this Court

carefully perused the plaint. No where, it is mentioned that the petitioner lost the possession over the suit schedule property as on 11.07.2008. As per the recitals of plaint, respondents 3 to 7 have made an attempt to interfere with the possession of the suit schedule property. The very purpose of amendment of plaint is to avoid multiplicity of litigation. Originally the suit was filed for perpetual injunction. The present petition is filed for recovery of possession. It is needless to say one has to file a suit for recovery of possession within twelve years immediately after losing the possession. The suit was filed in the year 2008.

8. A perusal of the record *prima facie* reveals that the petitioner filed the petition within the period of limitation. If the petition is dismissed, the petitioner will be forced to file a fresh suit against the respondents. Compelling the petitioner to file another suit would amount to multiplicity of proceedings. Mere delay in filing the amendment petition that itself, is not a valid ground to dismiss the petition. As observed earlier, the period of limitation is not three years for filing of suit for recovery of possession. The trial Court, without properly considering the provisions of the Limitation Act, dismissed the petition. Even if the petition is allowed, the same may not cause any prejudice to the respondents, more particularly, respondents No.3, 4 and 5. For one reason or the other, respondents 3, 4 and 5 did not choose to oppose the petition. If the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice. Taking into consideration the facts and circumstances

of the case, I am of the considered view that it is a fit case to allow the petition.

9. In the result, the Civil Revision Petition is allowed setting aside the order dated 04.05.2018 in I.A.No.319 of 2016 in O.S.No.77 of 2018 on the file of the Court of Junior Civil Judge, at Narayanpet. Consequently, I.A.No.319 of 2016 is allowed permitting the petitioner-plaintiff to amend the plaint. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dt:18.09.2018
Rns

T.SUNIL CHOWDARY, J



