

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.4966 of 2012

ORDER:

Heard Mr.Rajamalla Reddy for petitioners and Mr.A.Suryanarayana for respondents.

The Civil Revision Petition is directed against the order dated 04.07.2012 in I.A.No.2410 of 2008 in O.S.No.934 of 2004.

Respondents 1 to 9 herein are the plaintiffs. The suit is filed for perpetual injunction restraining the defendants from in any manner interfering with the possession and enjoyment of respondents 1 to 9 to plaintiff schedule property. Respondents 1 to 9 filed the instant application under Order VI Rule 17 of Civil Procedure Code (CPC) for amendment of plaint as follows:

“i) To delete the sentence from Para No.2 “the defendants No.1 to 3, who are having only Ac.1-10 guntas toward northern side of the suit schedule property under same Sy.No.1355/B,....”

ii) to delete the sentence from north side of suit schedule property as “Land belonging to defendants” may be replaced with “boundary line of Seetaampur village.”

The application is allowed.

The affidavit filed in support of I.A.No.2410 of 2008 refers to the circumstances under which the proposed amendment is necessitated. For the purpose of disposing of

the present Civil Revision Petition, this Court prefers to advert to a few of the allegations in the said affidavit.

The suit has been filed for perpetual injunction and the counsel appearing for respondents 1 to 9 was made to draft the case keeping in view the threatened interference of revision petitioners herein with the possession and enjoyment of respondents 1 to 9 of plaint schedule property. In the process, an inadvertent averment is made in the plaint which is contrary to the very documents on which the present suit is filed. The proposed amendment, since is already excerpted, for brevity I am not reproducing the proposed amendment once again. The learned trial Judge after taking note of the objections raised by the revision petitioners herein allowed the I.A. and the gist of order reads as follows:

“It is evident that, the boundary is wrongly mentioned whether it is by mistake or not is irrelevant at this stage. But since the proposed amendment will not change the cause of action and moreover it is important for the purpose of deciding at the stage of execution petition if the plaintiff succeeds. Hence, this Court is of opinion that, the petitioner is entitled to relief”

and allowed the application

Mr.Rajamalla Reddy contends that what is stated in the plaint is an admission. Respondents 1 to 9 cannot be allowed to take away the admission made by way of pleadings. He places strong reliance on the decision reported in **Heeralal**,

Appellant v. Kalyan Mal and others, Respondents¹ and contends that the order impugned in the Civil Revision Petition is liable to be set aside and Civil Revision Petition is to be allowed.

Mr.A Suryanarayana, on the other hand, contends that the cause of action for filing the suit is referable to threatened interference of revision petitioners herein. The plaintiffs refer to registered document No.245/1994 and document No.10596/2003, where under respondents 1 to 9 claim their right, title and possession. According to him, the proposed amendment is necessitated to keep the case of respondents 1 to 9 in line with the documents on which respondents 1 to 9 are relied upon. He further submits that these documents are also filed in the list of documents and therefore it is not a case of admission on the pleading, but it is a case of inconsistency in pleading with the documents on which the respondents 1 to 9 are relied upon. According to him, the decision relied on by Mr.Rajamalla Reddy is distinguishable and at any rate since the suit is one for perpetual injunction, a party is required to prove *prima facie* case, balance of convenience and irreparable loss for seeking the intervention of the trial court. According to him, since the discretion is

¹ AIR 1998 SC 618

exercised for valid reasons, this Court by exercising jurisdiction under Article 227 of Constitution of India ought not to substitute, more particularly in the absence of any illegality warranting interference of this Court in its supervisory jurisdiction and the revision is liable to be dismissed.

I have perused the record and noted the submissions of learned counsel appearing for the parties.

The contention of Mr. Rajamalla Reddy at the first blush appeared to be tenable and reasonable. But on close examination what is revealed, which ultimately necessitated filing the instant application for amendment is that a statement contrary to details borne out by a registered document crept in the plaint. Through the proposed amendment, the inconsistency sought to be ironed out and parties join the trial for the correct details.

I have perused the reasons given by the trial Judge. In the case on hand, the distinguishable circumstance is inadvertent mistake has crept in and respondent 1 to 9 have stated that at the time of settling the pleading, the mistake has crept in. Even assuming the amendment is allowed, still it should not be understood that the case of respondents 1 to 9 for grant of perpetual injunction is accepted by the trial

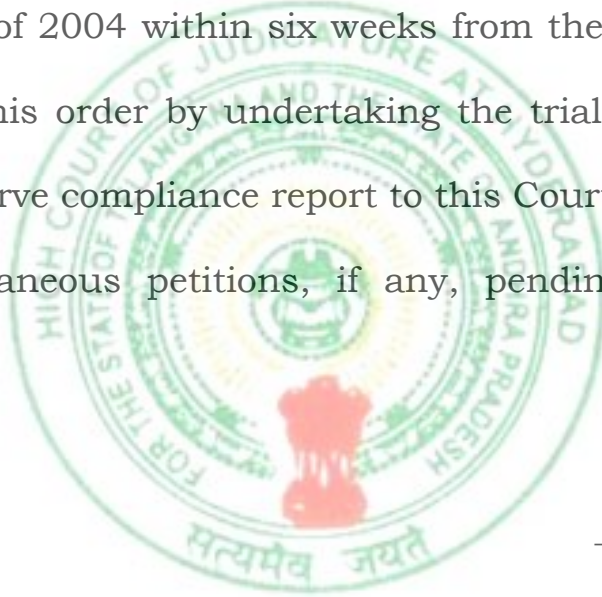
Court. Again this is a matter of trial wherein respondents 1 to 9 are required to prove actual and physical features of the property for which the relief of injunction is sought for.

For the above reasons, this Court is convinced that no ground is made out warranting interference under Article 227 of constitution of India.

Hence, Civil Revision Petition fails and accordingly dismissed. No order as to costs.

The trial Court is directed to dispose of the suit O.S.No.934 of 2004 within six weeks from the date of receipt of copy of this order by undertaking the trial on day to day basis and serve compliance report to this Court.

Miscellaneous petitions, if any, pending, shall stand closed.



S. V. BHATT, J

Dt: 28.08.2018

Note:
CC in three days and
registry is directed to communicate the
copy of this order to the Court of
Principal Junior Civil Judge, Karimnagar.
 dv

