

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

CRP.No.580 of 2014

ORDER:

This revision petition is filed questioning the docket order dated 18.12.2013 in IA.No.706 of 2013 in OS.No.256 of 2007 by the Junior Civil Judge, Sullurpet, Nellore.

The suit OS.No.256 of 2007 is filed for permanent injunction against the defendants. After the trial was completed and when the matter was reserved for judgment, the present application (IA.No.706 of 2013) was filed by the plaintiff seeking amendment of the plaint. The said application was allowed by a docket order dated 18.12.2013, which is now impugned in this revision petition.

This Court has heard Ms.Sirisha representing Sri V.Sreenivasa Rao, learned counsel for the petitioner and MrsN.Anula, learned counsel for the respondents.

Learned counsel for the petitioner argues that there is specific bar contained in Order VI Rule 17 of CPC., which prohibits the post trial amendments. Learned counsel argued that even if counter was not filed by the revision petitioner, the Court should not have allowed the proposed amendment in view of the bar contained under Order VI Rule 17 of CPC. In addition, the counsel submits that an altogether new cause of action has been introduced as a suit for injunction is being converted into a suit for declaration of title. She also

questions the manner in which the application was allowed without a speaking order.

Learned counsel for the respondents on the other hand argues that as the amendment is necessitated in view of the fact that the defendants have raised a plea of title in the course of their written submissions. Learned counsel argues that once the party has raised a plea of declaration, in order to prevent multiplicity of proceedings, it is necessary for the Court to amend the plaint so that complete and effective adjudication of all the issues involved in between the parties can be carried out. Therefore, learned counsel for the respondent supports the order that is passed and states that the suit has not undergone a change, the matters that are pleaded are also not really challenged. The only additional plea that is raised is that there should be a relief of declaration and consequential para has to be added. Therefore, she argues that new cause of action is not being set up at all.

After hearing both the learned counsels, this Court is of the opinion that the point that arises for consideration is “whether the application has been rightly allowed”.

It is not in dispute in this case that the trial was completed and the suit was posted for arguments. Therefore, this is a clear case of a post trial amendment. The affidavit that is filed in support of the application (IA.No.706 of 2013) is absolutely blank and bereft of details. There are just two

paras in the affidavit filed in support of IA.No.706 of 2013. Absolutely no reasons are given for seeking amendment.

After the amendment to Order VI Rule 17 by Civil Procedure Amendment Code, 2002, it is mandatory in post trial amendments that the affidavit should clearly disclose the exercise of due diligence and the failure of the party to discover the matters pleaded, despite the exercise of due diligence. In **Vidyabai vs. Padmalatha**¹, the Hon'ble Supreme Court clearly held that in post trial amendments, it is mandatory that the petitioner should plead and prove that the matters which are now sought to be introduced in evidence were not in their knowledge and despite exercise of diligence, they could not be discovered. The Hon'ble Supreme Court sounded a note of caution and held that the Court should be satisfied about the exercise of due diligence which should be clearly pleaded and proved. In the case on hand, the affidavit is absolutely silent about the due diligence. In fact, virtually no cause is set up seeking amendment as required under law.

This Court also notices that an issue about the declaration of title has already been raised. A perusal of the docket order dated 21.09.2007 in the lower Court shows that issue No.3 is framed to the following effect:

¹ 2009 (2) SCC 409

“Whether the suit for injunction without seeking the relief of declaration of title and delivery of possession is maintainable under law?”

A reading of this issue makes it clear that the defendants have already raised a plea that a bare suit for an injunction does not lie without seeking a relief of delivery of possession in the facts and circumstances of the case.

In view of the back drop of this and in view of the settled legal position as in **Vidyabai**'s case (1 supra), this Court is of the opinion that the affidavit that is filed is absolutely bereft of details. It does not contain any of the necessary averments for the amendment of a plaint, particularly a post trial amendment. The very purpose of the amendment to Order VI Rule 17 of CPC., will be defeated if such a cursory affidavit is filed and a cursory order is passed. It is clear that the lower Court did not exercise its judicial mind on the subject. The mere fact that the respondent/revision petitioner did not file the counter will not empower the Court to allow the application if the facts necessary for granting the relief are not pleaded and proved. The lower Court failed to look into the affidavit particularly in a post trial amendment.

Therefore, this Court is of the opinion that the order passed by the lower Court is absolutely incorrect and opposed to law.

The Civil Revision Petition is therefore, allowed. No order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 26.11.2018
KLP

