

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.3680 of 2018

ORDER:

The revision is filed by the plaintiff in O.S.No.40 of 2013 on the file of the VI Additional District Judge, Nellore District against the respondent/defendant, impugning the dismissal order, dt.06.04.2018 passed in I.A.No.35 of 2018 filed by him under Order VI Rule 17 r/w 151CPC seeking to permit him to amend the plaint as *“the plaintiff is taking separate steps to set aside the ex parte decree and decide the same on merits”*.

2, The plaintiff filed O.S.No.40 of 2013 for declaration of the plaintiff as absolute owner of the suit schedule property and consequential injunction against the respondent/defendant and for damages. The plaintiff herein in another suit O.S.No.123 of 2011 filed a petition in I.A.No.32 of 2013 to set aside the ex parte decree dated 03.05.2012 but the same was dismissed on 17.11.2014 against which the plaintiff preferred revision but the same was dismissed on 13.06.2016.

3. In the above background, the grounds in the present revision are that the trial Court failed to consider the proposed amendment which is necessary to avoid multiplicity of proceedings and also failed to note that the same will not change the nature of the suit and also will not take away defence of the respondent/defendant. The Court below failed to see the necessity of amendment in order to determine the real question of controversy involved in the matter. The amendment sought for is just to insert the subsequent events in the suit which arose during the years 2014 to 2016. The Court below failed to frame the point for consideration as to whether the proposed amendment of plaint which sought after commencement of trial is to be allowed or not without proving due diligence.

4. Heard both sides and perused the material on record.

5. The present suit O.S.No.40 of 2013 filed on 19.02.2013 is for declaratory relief of title over the plaint schedule property with damages of Rs.4,50,000/- and with consequential injunction against the defendant and other reliefs, from interfering with the so called possession and enjoyment of the plaintiff over the suit schedule property. The defendant filed written statement dt.08.07.2013 opposing the suit claim on various grounds including in disputing the so called claim of title of the plaintiff under the alleged unregistered will/testament dt.10.12.1984 of so called K.Buchamma W/o Peraiah in favour of Gaddem Lingaiah, who is the present plaintiff represented by GPA, his son Gaddam Venkaiah, as a forged and fabricated besides other contentions of suit claim is barred by limitation and suit is bad for non-joinder of the necessary parties etc. The Court as many as framed 7 issues by the end of December, 2013 to proceed with the trial. Undisputedly in the suit O.S.No.40 of 2013 supra after evidence of the plaintiff that too witnesses taken for about 3 years, the defendant's evidence is in progress for D.W.1 already examined in chief and cross-examined in part and while coming for further cross-examination even by that time, the proposed amendment sought for in I.A.No.35 of 2018 covered by the impugned dismissal order. It is at this stage the amendment of the plaint sought for by the plaintiff by the application of February, 2018, is to add in the prayer the relief of consequentially to set aside the operation of decree dt.03.05.2012 passed in O.S.No.123 of 2011 as referred supra. The served copy of plaint in O.S.No.123 of 2011 was filed along with the plaint in O.S.No.40 of 2013 as document No.5. The so called exparte decree in O.S.No.123 of 2011 was prior to the filing of the suit O.S.No.40 of 2013 to say dated 03.05.2012 admittedly. What it pleaded is I.A.No.32 of 2013 filed to set aside the said exparte decree and that application was ended in dismissal on 17.11.2014 and confirmed by dismissal of the revision before the High Court on 13.06.2016. Once such is the case, the question of adding in the prayer as consequential relief to set aside the operation of the decree, dt.03.05.2012 of O.S.No.123 of 2011 does not arise, leave apart there is no due diligence as

contemplated by Order VI Rule 17 proviso of CPC. The trial Court, by the impugned order dated 06.04.2018, when rightly dismissed the application, for this Court while sitting in revision there is nothing to interfere.

6. In the result, the Civil Revision Petition is dismissed. Consequently, miscellaneous petitions, if any, pending in this revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:..21.08.2018
Vvr

