

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.3685 OF 2018

ORDER:

The plaintiff in O.S.No.43 of 2012 in the Court of the Senior Civil Judge, Huzurabad is the revision petitioner.

The revision petitioner filed the suit for perpetual and mandatory injunctions in his favour. The petitioner, on 04.06.2018, filed petition under Order VI Rule 17 CPC for amendment of plaint.

The proposed amendments read thus:

- i. the defendants Nos.1 & 2 in the month of November, 2012 have raised a compound wall towards north of the site belongs to defendant No.1 connecting from the south west corner of the wall of tin shed school towards its south for a length of about 6 ft' and then towards its west and erected an iron gate in between the way (road) touching to the compound wall of Pothireddy Mallaiah. The said compound wall together with erection of gate subsequent to filing of suit taking advantage of the absence of the plaintiff in the village. Hence the said illegal construction and erecting the gate is specifically identified in blue colour dots in the rough sketch map appended to plaint,
- ii. Where in the rough sketch map as the petitioner had shown a line towards North of the suit site and site of Defendant No.1 together with a way(gate) till the said lane the green dots have to be inserted identifying it as it belongs to defendant No.1."

The respondents opposed the prayer and the trial Court. Upon consideration of all relevant circumstances dismissed the prayer. Hence, the revision.

Order VI Rule 17 proviso reads thus:

"Amendment of Pleadings: 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 in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

The petitioner, at the outset, must satisfy that the proposed amendment satisfies the proviso and necessary pleadings to the said effect are made in the affidavit. In the case on hand, the trial Court by referring to various dates and events has recorded the following findings:

“Perused the material available on record. The plaintiff filed suit for declaration and perpetual injunction and also for mandatory injunction with a direction to demolish the structures raised in the suit site. In this case, already in the plaint pleadings itself the plaintiff sought that already structures were raised by the respondents in the suit schedule property and also filed separate IA to demolish the structures raised in the suit property. Already plea was taken by the plaintiff at the time of filing of the suit with regard to the structures raised by the defendants in the suit schedule property and also filed an application to demolish the structures raised in the suit schedule property. Now after lapse of six years the plaintiff came with a petition to amend the pleadings by adding extra paragraph with regard to the constructions raised by the defendants. Parties cannot be allowed on such plea without placing sufficient material or documents, satisfying this Court prima facie.

Thus the proposed amendments with regard to raising construction in suit land and introducing new one, that cannot be permitted. Allowing of such amendment would certainly amounts to abuse of process of law and causes prejudice to the other party. Except the allegation that the alleged structures constructed after filing of the suit the petitioner failed to file any document or photographs and also failed to mention the date on which the alleged

construction is taken place and also failed to file any permission obtained by the respondents after filing of the suit for construction of the alleged wall. Moreover the very title of the petitioner over the suit schedule property is being challenging by the other side party that the petitioner is not the owner of the suit property and in such circumstances without proving his title and without stepping into the witness box even on conditional orders issued by this Court, the petitioner filed this petition through which it appears that present petition is filed only to drag on the matter after lapse of about six years of the filing of the suit since the case is pertaining to the year 2012 and identified case. Hence, I see no merits in the application made by the petitioner. I do not find any reasonable ground for allowing the amendment sought by the petitioner in the application which was not only a belated one but clearly an after thought for the obvious purpose. Hence for the reasons discussed above, I am of the view that the petitioner is not entitled for the relief as prayed for."

The petitioner could not convince this Court that a jurisdictional error against the order impugned in the revision exists or a ground which convinces this Court to examine the prayer for amendment is made out.

This Court since is in agreement with the reasons recorded in the order under revision, the revision fails and is, accordingly, dismissed. The learned trial Judge, considers expediting the hearing of the suit as expeditiously as possible preferably within two months from the date of receipt of a copy of this order. There shall be no order as to costs.

Pending miscellaneous petitions, if any, stand closed.

S.V.BHATT, J

30th August, 2018
Lrkm