

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

C.R.P.No.4552 OF 2018

ORDER: (ORAL)

Vide the present petition, the petitioner has challenged order dated 11.6.2018 passed in I.A.No.431 of 2016 in O.S.No.188 of 2012 by the Principal Junior Civil Judge, Repalle, Guntur District, whereby the petition filed under Order 1 Rule 10 and Order VI Rule 17 of CPC and under Rule 28 of Civil Rules of Practice and Section 151 of CPC to amend the plaint, has been dismissed.

2. Learned counsel appearing on behalf of the petitioner submits that initially the petitioner filed a suit for injunction and thereafter vide I.A.No.431 of 2015 sought to amend the plaint whereby seeks declaration of title and possession of the property. In the said application, it is stated that after filing the plaint in the year 2015, he came to Hyderabad to get the treatment of his ill wife. Meanwhile, the respondents have taken the possession and change the nature of the property. To this effect, the petitioner neither filed any document before the trial Court nor before this Court.

4. The case of the petitioner is that by the time of filing of the suit, he prayed for permanent injunction against the defendants, later he came to know that, the defendants have encroached his land and converted dry land into wet land, as

such, he filed amendment petition, accordingly. The petitioner/plaintiff has sought for declaration of title, recovery of possession and also mandatory injunction.

5. Learned trial Court opined that in a suit for declaration of title, the petitioner should have filed documents to show that he is having right and title over the suit schedule property. Without filing any documents, the petitioner is not entitled for declaration of title, thus proposed amendment cannot be considered.

6. The petitioner also sought for mandatory injunction against the defendants. The above 3 petitions were filed by the petitioner but without filing any document.

7. In a case of **Rajkumar Gurawara (Dead) Thr. L.Rs. Vs. M/s. S.K. Sarwagi & Co.Pvt. Ltd & Anr.**¹, in para-7, it is held that, granting of application for amendment be subjected to certain conditions, namely (1) when nature of it is changed by permitting amendment (2) when amendment would result introducing new cause of action and intention of prejudice to other party (3) when allowing amendment application defeats law of limitation.

8. The petitioner is not only failed to satisfy the conditions prescribed under the provisions of Order VI Rule 17 of CPC, but even his claim is liable to be rejected.

¹ AIR 2008 SC 2303

9. In addition to above, this Court has put a specific query to the learned counsel for the petitioner that after filing the suit, when he came to Hyderabad for treatment of his wife, have you filed any documents before Court below or before this Court? However, he replied in negative.

10. Since there is no material on record to allow the amendment petition therefore the learned trial Court has rightly dismissed the petition filed by the petitioner.

11. Finding no merit in the present petition and the same is accordingly dismissed. No order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.



SURESH KUMAR KAIT, J.

Date : 10-08-2018
Gvl