

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5028 of 2018

ORDER :

Heard the counsel for petitioner. None appears for respondent.

2. The petitioner has filed this Civil Revision Petition assailing the order dt.19.07.2018 passed in I.A.No.403 of 2018 in O.S.No.4 of 2013 on the file of Junior Civil Judge, Alamuru, East Godavari District, Andhra Pradesh.

3. The petitioner herein is plaintiff in the above suit.

4. He filed the suit on 03.01.2013 seeking mandatory injunction directing the respondent to remove lock to the suit schedule premises, and for grant of permanent injunction restraining the respondent from interfering with the alleged possession and enjoyment of the petitioner over the plaint schedule property.

5. In the plaint, the petitioner alleged that when he went to Hyderabad along with his wife for his wife's treatment, the respondent highhandedly removed the lock on one side of the shutter of the suit schedule premises and put his lock, and when the petitioner returned and questioned the respondent to remove the lock and receive the rent, the respondent did not do so.

6. Written Statement was filed disputing the above allegations and taking a plea that the petitioner himself had vacated the premises in

June, 2012 and there was no landlord and tenant relationship between the parties on the date of filing of the suit.

7. Before trial commenced, the petitioner filed I.A.No.403 of 2018 on 10.07.2018, contending that along with the suit he had also filed I.A.No.13 of 2013 for interim mandatory injunction; that the Court below issued urgent notice to the respondent; and after receiving such notice on 05.01.2013, the respondent and his brother and henchmen broke open the lock on the schedule premises on 07.01.2013, committed robbery of the entire material along with cash by trespassing therein and took over possession of the plaint schedule property; and therefore, the plaint be amended and petitioner be permitted to seek a mandatory injunction for restoration of possession.

8. It is the specific case of the petitioner in the above application seeking amendment that he was dispossessed after the filing of the suit and during its pendency. He also explained the delay in seeking the amendment on the ground that both his father and wife were suffering from cancer and he was attending to their treatment and could not contact his counsel.

9. Counter-affidavit was filed by the respondent opposing the application for amendment, and denying the allegations made by petitioner in the application seeking amendment.

(a) Reliance is also placed by respondent on dismissal of I.A.No.17 of 2013 for interim injunction as well as filing of I.A.No.18 of 2013 under Section 6 of the Specific Relief Act, 1963 (**for short, 'the Act'**)

by petitioner for seeking restoration of possession which was initially allowed but was set aside in C.M.A.No.2 of 2013 on the file of Senior Civil Judge, Ramachandrapuram on 12.07.2016.

(b) It is also contended in the counter that as per Section 6 of the Act, the petitioner should have filed a suit for recovery of possession within six (06) months from the date of dispossession and since, according to petitioner, he was dispossessed on 07.01.2013 he should have filed application for amendment of the plaint in 2018, after five and half years (5 ½); and that such an application is not maintainable.

(c) By order dt.19.07.2018, the Court below dismissed I.A.No.403 of 2018. It held that an amendment must be refused where a plaintiff seeks to amend the plaint by setting aside a fresh claim in respect of a cause of action, which since the institution of the suit, had become barred by limitation; that the amendment application was filed on 10.07.2018 pleading alleged dispossession on 07.01.2013; and he should have filed a suit for recovery of possession under Section 6 of the Act and within six (06) months.

10. Assailing the same, the present Civil Revision Petition is filed.

11. The counsel for petitioner contended that the alleged dispossession occurred after filing of the suit, according to petitioner, and so, petitioner cannot be deprived of an opportunity to amend the plaint and seek for restoration of possession. He also contended that Section 6 of the Act has no application since he is not seeking any relief under that provision and Articles 64 and 65 of the Limitation

Act would apply, and the period of limitation would be twelve (12) years for recovery of possession; and the Court below completely lost sight of this fact and rejected the application for amendment.

12. On the other hand, the counsel for respondent supported the order passed by the Court below. He also contended that the case pleaded in the amendment by the petitioner is not true in view of the findings in C.M.A.No.2 of 2013 adverse to petitioner, and therefore, the application for amendment was rightly dismissed.

13. I have noted the contentions of both sides.

14. According to petitioner, he was dispossessed by the respondent after filing of the suit on 07.01.2013. This being an event which occurred subsequent to the filing of the suit, the petitioner is entitled to seek amendment of the plaint to bring on record these facts and seek suitable amendment of the plaint. At this stage of considering the application for amendment, the Trial Court could not have gone into the correctness or otherwise of the plea raised by the petitioner, and neither can the respondent be allowed to make submissions on that aspect since he would get an opportunity to file an amended written statement taking whatever defence he intends to take to the amended plaint.

15. Also, the observation of court below that plea of recovery of possession is barred by limitation on the ground that the petitioner should have sought for it within six (06) months from the date of dispossession, is patently erroneous and the Court below ought not to

have accepted such a plea of the respondent. There is no question that the said provision of law is inapplicable to the instant case since the suit is not filed by the petitioner under Section 6 of the Act. The date of alleged dispossession is a question of fact which is to be proved during the trial by reference to Limitation Act, 1963 and it is premature for the Court below to express any opinion on the said issue and dismiss the application for amendment on the said ground.

16. Accordingly, the Civil Revision Petition is allowed. The order dt.19.07.2018 passed in I.A.No.403 of 2018 in O.S.No.4 of 2013 on the file of Junior Civil Judge, Alamuru, East Godavari District is therefore set aside.

17. I.A.No.403 of 2018 in O.S.No.4 of 2013 on the file of Junior Civil Judge, Alamuru, East Godavari District is allowed, and the Court below is directed to proceed in accordance with law by permitting the petitioner to file the amended copy of the plaint and give opportunity to the defendant / respondent to also amend the written statement suitably. No order as to costs.

18. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28.11.2018

Ndr/*