

HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.5047 of 2017

ORDER:

The defendant in O.S.No.272 of 2013 is the revision petitioner. The respondent filed I.A.No.799 of 2016 for amending the plaint to include Sub-Para No.2-A and also amend the prayer to include the relief of mandatory injunction.

The petitioner resisted the prayer for amendment. The learned trial Judge, after taking note of the stage of the matter and to avoid multiplicity of proceedings, permitted the prayer for amendment. Hence, the Civil Revision Petition.

Mr.V.Sikantha Rao vehemently contends that by admitting the constructions in the plaint schedule property, the respondent herein is admitting that the respondent is not in possession of the property. Unless and until the prayer includes for recovery of possession, the prayer simplicitor for permanent injunction is unavailable and ought not to have been considered by the trial Court. He vehemently contends that the proposed amendment substantially changes the cause of action and the application for amendment should have been dismissed.

The contentions since are made with force, this Court is constrained to refer to the contentions of Mr.V.Sikantha Rao.

The respondent in the affidavit filed in I.A.No.799 of 2016 has alleged that the revision petitioner herein in utter disregard

and violation of order, dated 27.09.2013 by damaging the compound wall, since 18.10.2013 raised compound wall on three sides except on western side. The substantial issue for consideration before the trial court, even after amendment is permitted, will be not only the time at which the alleged constructions are made but also on the *prima facie* case etc.

The trial court has exercised its jurisdiction, having regard to the facts and circumstances of the case and I do not see any ground warranting interference under Article 227 of the Constitution of India.

The revision fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 21-02-2018
Pv



S. V. BHATT, J

