

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRP No.3596 of 2015

ORDER:

This Civil Revision Petition is filed questioning the order dated 08.07.2015 passed in IA No.77 of 2014 in OS No.281 of 2012 by the Principal Junior Civil Judge, Adoni.

OS No.281 of 2012 is a suit filed for a permanent injunction. The suit was filed in November 2012. The case of the plaintiff is that the defendant executed an agreement of sale on 25.03.1989. The defendant received the consideration and put the plaintiff in possession. As the defendant tried to forcibly dispossess the plaintiff, the suit is filed for a permanent injunction.

The defendant in the suit, who is the respondent herein, filed a written statement in February 2013 denying the case of plaintiff; denying the agreement and also stating that a bare suit for injunction does not lie.

Later, IA No.77 of 2014 came to be filed in December 2014 for amendment of the plaint. The plaintiff/revision petitioner filed an application under Order 6 Rule 17 CPC seeking to introduce a prayer along with the supporting paragraphs for a relief of specific

performance. The consequential amendments were also spelt out as required under law in the said application.

The respondent/defendant filed a counter strongly opposing the application and clearly stating that an altogether new case is being set up. It is the case of the respondent that the suit filed for a bare injunction is sought to be converted into one for specific performance.

The lower Court after hearing both the learned counsel dismissed the application for amendment of the prayer in the plaint, vide its order dated 08.07.2015. It is this order dated 08.07.2015 that is impugned in the present revision.

This Court has heard Sri J. Janaki Rami Reddy, learned counsel for the revision petitioner/plaintiff and Sri K.V. Raghuveer, learned counsel for the respondent/defendant. The copies of the plaint and written statement were furnished during the hearing and taken for appreciation of the contents.

The learned counsel for the revision petitioner submits that frame of the suit is not changed and that basing on the agreement of sale only, the suit was filed for injunction and now the plaintiff merely seeking to get a decree for specific performance. He states that pre-trial amendments should be liberally allowed. He relies upon

Sampath Kumar v. Ayyakannu¹, for this proposition and argues that the pre-trial amendment should be liberally allowed.

The learned counsel for the respondent/defendant on the other hand argues that an entire new case is set up by the plaintiff who claims to be possession of the property. The plaintiff who sought an injunction to protect his possession is now seeking a relief of specific performance. The learned counsel points out that the agreement entered into on 25.03.1989 and specific performance is sought for in the year 2014 through the amendment. It is his contention that the said plea is hopelessly barred by time and that by converting the plaint into the suit for specific performance from a suit for an injunction is introducing an altogether new cause of action.

This Court after hearing both the learned counsel notices the fact that the agreement of sale on the basis of which the plaintiff claims possession and also specific performance is dated 25.03.1989. The suit for a bare injunction is filed in the year 2012. The written statement was filed in February 2013 denying the case. It is also pleaded that a bare suit for injunction does not

¹ (2002) 7 SCC 559

lie in the facts and circumstances. The defendant also pleaded that the suit is barred by time. The relief of specific performance is sought 23 years after the agreement. No doubt, the case law that is relied upon by the learned counsel for the revision petitioner/plaintiff deals with the pre-trial amendment. But in the facts and circumstances of that case, the Hon'ble Supreme Court noticed that the suit was filed in the year 1988, but in January 1989 that is after the filing of the suit and during the pendency, the defendant forcibly dispossessed the plaintiff. In view of the fact that subsequent to the filing of the suit, certain events had occurred, the Hon'ble Supreme Court permitted the amendment of the plaint. The cause of action as noticed by the Hon'ble Supreme Court arose during pendency of the suit. In the opinion of this Court, this is the distinguishing feature of this case.

This Court finds force in the submission of the learned counsel for the respondent/defendant. It is a settled principle of law that does not require repetition that an amendment which introduces a new cause of action or an amendment by which a plea (which is barred by time) is sought to be raised cannot be allowed. A perusal of the record reveals that both these factors are

present in this case. A new case is sought to be set up by the amendment. The agreement is of the year March 1989 and it was not specifically enforced. Despite claiming possession under the said agreement, the plaintiff did not seek a relief of specific performance till the amendment application is filed more than two decades later. The cause of action for the application for amendment and for specific performance did not arise subsequent to the filing of O.S.No.281 of 2012 to enable this Court to rely upon **Sampath Kumar's** case (stated supra). It arose earlier only and there are no subsequent events in this case like in **Sampath Kumar's** case.

Therefore, after considering the submissions of both the learned counsel and the case law on the subject, this Court is of the opinion that the lower Court did not commit any error in dismissing the application. There are no merits in the revision. Accordingly, the same is dismissed. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 29.10.2018
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