

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO. 6099 OF 2017

ORDER:

This civil revision petition is filed challenging the order in I.A.No.201 of 2013 in O.S.No.595 of 2012 dated 05.09.2017 passed by the VI Additional Senior Civil Judge, Vijayawada, whereby, the petition filed under Order VI Rule 17 and Section 151 C.P.C was allowed permitting the first respondent herein to amend the schedule by substituting Sy.No.18/9 part for Sy.No.18/8B in the schedule annexed to the plaint, on the ground that the property described in the schedule within the four boundaries is in Sy.No.18/9, but not Sy.No.18/8B, in view of the survey conducted by the Tahsildar and sketch issued. Therefore, the first respondent herein sought leave of the Court to amend the plaint schedule.

The first respondent filed detailed counter affidavit, denying the averments of the petition to amend the schedule, as there was no basis for his claim, since the rectification deed is not filed before the Court and the Tahsildar conducted survey in the absence of the present petitioner without issuing any notice and the survey is not binding and in case, the plaint is amended, the rights of this petitioner would be defeated, since he is claiming to be the owner of land in Sy.No.18/9 and therefore, at this stage, no leave can be granted to amend the pleadings exercising power under Order VI Rule 17 C.P.C.

The Trial Court upon hearing arguments of both the counsel, concluded that the boundaries will always prevail over the extent and survey number and when the boundaries are left intact, it is

not a ground to deny the relief under Order VI Rule 17 C.P.C and allowed the petition.

Admittedly, the first respondent filed suit for permanent injunction alleging that he is in possession and enjoyment of the property described in the schedule annexed to the plaint in an extent of Ac.0-27 cents, equivalent to 1296.0 sq.yds along with thatched house in R.S.No.18/8B, bearing Assessment No.325268 (New) 624/12A (Old), Door No.3-1-218A, situated in Kabela Road, Vidyadharapuram within the boundaries specified therein.

According to Order VII Rule 3 C.P.C, where the subject-matter of the suit is immoveable property, the plaint shall contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

In the present case, in compliance of Order VII Rule 3 C.P.C, the respondents mentioned both survey number and boundaries, including assessment and door number of the house to identify the immovable property with reference to the numbers of the boundaries. The requirement under Order VII Rule 3 C.P.C, is mentioning of boundaries or numbers in the survey record, to identify the property. Thus, the purpose of annexing schedule is to identify the property by both the parties and enable the defendant to raise his plea. The boundaries are left intact and not sought to be amended, but only survey number is to be substituted as the land specified within the four boundaries was found in Sy.No.18/9, but not in Sy.No.18/8B. There is no dispute with

regard to identification of the property with reference to the door number and the boundaries mentioned in the schedule. But the petitioner herein is claiming right over the land in Sy.No.18/9 independently. But, such questions cannot be decided while deciding an application filed under Order VII Rule 17 C.P.C.

According to Order VI Rule 17 C.P.C, 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 and if the Court is satisfied that it is just and necessary. But, a rider is annexed to Order VI Rule 17 C.P.C by Act 22 of 2002 with effect from 01.07.2002 which created interdict to exercise power in permitting the parties to amend their respective pleadings. The proviso is extracted hereunder:

“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.”

Therefore, the bar under the proviso to Order VI Rule 17 C.P.C will not come in the way, since trial has not yet commenced.

When Order VI Rule 17 C.P.C permits the parties to amend their pleadings at any stage, subject to proviso annexed thereto, the grounds urged by this petitioner is without any substance. But, the contention that he will be deprived to raise any specific plea is not correct. When the plaint is amended, the defendants are entitled to file subsequent pleadings under Order VIII Rule 9 C.P.C.

Therefore, the petitioner is at liberty to file additional written statement in view of the subsequent events that occurred during pendency of the suit.

The Trial Court exercised its power under Order VI Rule 17 C.P.C, which is purely discretionary in nature and when such discretionary order is passed, this Court would not normally interfere while exercising power under Article 227 of the Constitution of India, when it does not suffer from any legal infirmity, or perversity warranting interference of this Court. Therefore, I find no error in the order passed by the Court below, warranting interference of this Court.

In the result, the civil revision petition is dismissed, confirming the order in I.A.No.201 of 2013 in O.S.No.595 of 2012 dated 05.09.2017 passed by the VI Additional Senior Civil Judge, Vijayawada.

However, the petitioner is at liberty to file additional written statement/subsequent pleadings under Order VIII Rule 7 C.P.C that took place during pendency of the suit.

JUSTICE M. SATYANARAYANA MURTHY

Date: 22.10.2018

Note: copy by 24.10.2018
b/o

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