

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.5703 of 2017

ORDER:

This Civil Revision Petition at the instance of plaintiff is directed against the order dated 04.10.2017 in I.A.No.121 of 2017 in O.S.No.57 of 2000 passed by the Junior Civil Judge, at Narayanpet, dismissing the petition filed by the plaintiff under Order VI Rule 17 CPC seeking amendment of the plaint.

2) Factual matrix of the case is that plaintiff filed O.S.No.57 of 2000 against the defendants 1 to 6 seeking relief of declaration of her right in respect of plaint schedule plot measuring 141 sq. yards in Sy.No.1/AA appurtenant to H.No.1-145/3 with the boundaries mentioned in the plaint schedule. It appears when the matter was coming up for judgment the trial Court framed an additional issue and gave opportunity to both parties to lead evidence on additional issue. At that time, plaintiff having realized that the pleadings relating to cause of action not properly mentioned, sought permission of the Court to amend paras-11 and 13 of the plaint and to insert that on 21.04.2000 defendants 2 to 6 have denied the title of plaintiff over the suit plot and tried to disturb her possession. The said petition was dismissed by the trial Court as it was belated one.

Hence the CRP.

3) Heard arguments of Sri Yogesh Kumar Heroor, learned counsel for petitioner and learned G.P. for Arbitration for R2 to R6. Notice sent to R6 returned unserved.

4) The point for determination is:

“Whether there are merits in this CRP to allow?”

5) **POINT**: It is needless to emphasize after amendment of CPC by amendment Act 22/2002, the amendment of pleadings under Order VI Rule 17 CPC is not a matter of course particularly when the amendment is sought after commencement of the trial. The party seeking amendment has to establish that in spite of due diligence he could not have raised the matter before the commencement of trial.

6) In the light of above provision when the present matter is considered, the submission of learned counsel for petitioner/plaintiff in her affidavit filed in support of I.A.No.121 of 2017 is that when the matter was posted for leading evidence on additional issue, while perusing the pleadings she came to know that date of cause of action was 21.04.2000 when defendants 2 to 6 have denied her title over the suit plot and tried to disturb her possession. She intimated the same to her counsel while drafting the plaint but due to accidental slip and typographical mistake, the said cause of action was not mentioned in the plaint pleadings. Therefore, the cause of action paragraphs in the plaint are to be amended to the effect that the dates of cause of action arose on 10.05.1999 when the defendant No.1 has filed the pauper suit denying the title of plaintiff and on 21.04.2000 when the defendants 2 to 6 denied the title of plaintiff and tried to disturb her possession.

7) So, as can be seen from the aforesaid affidavit, the plaintiff submits 1st defendant denied her title in the pauper suit filed on 10.05.1999 and defendants 2 to 6 denied her title on 21.04.2000 and both the dates would constitute as integral part of cause of action for her. The reason projected by her for not showing the said cause of action is due to the accidental slip and typographical mistake committed by her counsel. There is no denial that petition is filed at the fag end of the suit.

8) Be that it may, a perusal of copy of the plaint in O.S.No.56 of 2000 would show that in fact in para-13 of the plaint, the plaintiff stated that cause of action for the suit arose on 27.03.1999. She did not mention the significance of the said date in the plaint to constitute cause of action. The suit was filed in the year 2000 for declaration and injunction. If the cause of action as pleaded, arose on 27.03.1999, the suit for declaration filed in the year 2000 can be said to be within time. Now, the plaintiff seeks to add two dates as part of cause of action i.e. 10.05.1999 and 21.04.2000. Even if these two dates are taken into consideration, apparently suit can be said to be within the period of limitation. Therefore, at the outset, the proposed amendment is not barred by limitation subject of course the decision on merits to be rendered by the trial Court.

9) Now, coming to delay aspect, it is the submission of plaintiff that due to accidental slip of her counsel, amendment could not be sought for at the earliest.

10) It is trite law that for the mistake of the counsel party shall not be made to suffer that too when valuable rights are at stake. Hence, the cause shown by the plaintiff for not filing the amendment petition before commencement of trial can be countenanced.

11) In the result, this CRP is allowed by setting aside the impugned order. Consequently I.A.No.121 of 2017 is allowed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 24.07.2018

Murthy

U. DURGA PRASAD RAO, J

