

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.6108 OF 2017

ORDER:

This civil revision petition is filed by the third defendant, under Article 227 of the Constitution of India, assailing the order dated 18.9.2017 passed in I.A.No.263 of 2015 in O.S.No.78 of 2011 on the file of the Court of Junior Civil Judge, Nandikotkur, Kurnool District.

2. Heard the learned counsel for both the parties.

3. The petitioner is third defendant, respondent Nos.1 and 2 are plaintiff Nos.1 and 2, and respondent Nos.3, 4 and 5 are defendant Nos.1, 2 and 4 respectively in the suit. The plaintiffs have filed I.A.No.263 of 2015 against the defendants. For the sake of convenience, the parties to this revision have been referred to, as they were arrayed in the I.A.

4. The petitioners filed the suit against the respondents seeking perpetual injunction in respect of the suit schedule property. During the pendency of the suit, the petitioners filed I.A.No.263 of 2015 under Order VI Rule 17 and Section 151 of CPC seeking amendment of the plaint and the plaint plan. The respondents filed counter opposing the petition on various grounds. The trial Court, after affording reasonable opportunity to both parties, allowed the petition. Hence, the revision petition.

5. Now, the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order, to warrant interference of this Court?

6. To substantiate the argument, learned counsel for the revision petitioner-defendant No.3 has drawn the attention of this Court to the decision in **Abdul Rehman v Mohd. Ruldu**¹, wherein the Hon'ble apex Court held paragraph Nos.7 and 15 as follows:

7. It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceedings for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

15. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

7. Let me consider the facts of the case on hand, in the light of the above legal principle.

8. It is an admitted fact that the petitioners filed O.S.No.78 of 2011 against the respondents seeking perpetual injunction in respect of an extent of Acs.0.47 cents in survey No.548 of Nandikotkur village and Mandal, Kurnool District. The respondents filed written statement denying the plaint averments. During the pendency of the suit, the petitioners filed I.A.No.263 of 2015 under Order VI Rule 17 and Section 151 of CPC seeking amendment of the plaint and plaint plan.

9. During the course of hearing, learned counsel for both the parties, in one voice, submitted that the trial, in the suit, has not yet been commenced. The Court can allow the amendment

¹ (2012) 11 SCC 341

petition before commencement of the trial. But, once the trial is commenced, the party, who files the amendment petition, has to satisfy the ingredients of Proviso to Rule 17 of Order VI of CPC. Both the parties are claiming that they inherited the suit schedule property from their ancestors. In a suit for injunction, the Court has to consider whether the plaintiff is in possession of the suit schedule property as on the date of filing of the suit or not. While deciding the amendment petitions, the Court has to consider: (1) whether the proposed amendment will alter the nature of the suit or cause of action; (2) whether the proposed amendment is barred by law; and (3) if the petition is allowed, would it cause any prejudice to opposite party.

10. As rightly pointed out by the learned counsel for the revision petitioner-defendant No.3, the petitioners filed the suit in respect of survey No.548. The petitioners filed the I.A., seeking amendment of the plaint to include survey No.547. It is the case of the petitioners that their forefathers got the property under a relinquishment deed vide document No.875 of 1899, dated 07.9.1899. Due to old age, the first petitioner could not furnish full particulars of the suit schedule property to the counsel at the time of drafting the plaint, which prompted them to file amendment petition. Even as per the averments made in the plaint, the petitioners inherited the suit schedule property from their ancestors, vide document No.875 of 1899, dated 07.9.1899. Even if the petition is allowed, nature of the suit or cause of action remains in-tact. Like-wise the proposed amendment is not barred by law. Allowing of the amendment would not cause any prejudice

to the respondents in view of foundation laid in the suit. On the other hand, if the petition is dismissed, the petitioners have to file separate suit in respect of survey No.547, which may lead to multiplicity of the proceedings. The petitioners have satisfied the basic ingredients of Order VI Rule 17 of CPC. The trial Court considered the material available on record in right perspective and allowed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial Court.

11. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of the considered view that it is a fit case to allow the amendment petition. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court. However, the petitioner-defendant No.3 is at liberty to file additional written statement after carrying out of the amendments. However, the revision petitioner-defendant No.3 is at liberty to file additional written statement after carrying out of the amendments.

12. In the result, the civil revision petition is dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 21.8.2018

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