

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.6364 of 2017

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order dated 06.10.2017 passed in I.A.No.258 of 2017 in O.S.No.258 of 2015 on the file of the Court of the Principal Junior Civil Judge, Adoni.

2 Heard the learned counsel for both sides.

3 A perusal of the record reveals that the petitioner filed O.S.No.258 of 2015 on the file of the Court of the Principal Junior Civil Judge, Adoni against the respondents for declaration of title and consequential mandatory injunction in respect of the suit schedule property i.e. Sy.No.444-B of Mandigiri village, Kurnool district. During the pendency of the suit, the petitioner filed I.A.No.258 of 2017 under Order VI Rule 17 CPC seeking to amend the plaint. The respondents opposed the petition by filing counter. The trial court, after affording reasonable opportunity to both parties, dismissed the petition. Hence the present revision.

4 It is the case of the petitioner that he purchased the suit schedule property under a registered sale deed. The respondents filed written statement stating that the Sy.No.445-B was sub-divided into 444-B2. After filing of the written statement, the vendor of the petitioner executed a rectification deeds on 16.8.2016. The petitioner filed an interlocutory application to receive the rectification deeds and the same was allowed by the trial Court. Thereafter, the petitioner filed I.A.No.258 of 2017 under Order VI Rule 17 CPC to amend the plaint and the same was dismissed by the trial Court on the ground

that the rectification deed dated 16.8.2016 will change the nature of the case and character of the suit by introducing a new cause of action.

5 In order to substantiate the contention, the learned counsel for the petitioner has drawn attention of this court to ***Rajkumar Gurawara vs. M/s. S.K.Sarwagi and Co. Pvt. Ltd***¹ wherein it was held that:

“(i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation.”

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

7 The petitioner filed the suit for declaration of title and consequential mandatory injunction. The petitioner did not file the petition under Order VI Rule 17 CPC seeking amendment of the prayer in the suit, if allowed, eventually, the nature of the suit would be altered from the suit for declaration to some other relief. There is no dispute with regard to the identity of the property. Even if the petition is allowed, the relief of declaration of title will remain intact. The petitioner did not ask for amendment of cause of action. This Court is unable to understand how the rectification deed dated 16.8.2016 will change the nature of the suit. In the rectification deed, new survey number was mentioned in place of old survey number. The finding recorded by the trial Court that if the petition is allowed the nature of the suit will be altered, is without any basis. No new fact was sought to be introduced by way of amendment to the plaint.

¹ AIR 2008 Supreme Court 2303

At the time of arguments both counsel with one voice submitted that so far trial has not commenced in the suit. It is needless to say that before commencement of trial, the Court can liberally allow the petition for amendment. The court below has not considered the scope of Order VI Rule 17 CPC and dismissed the petition on erroneous grounds. The facts of the case on hand will not fall within the points enunciated in the case cited supra. As observed earlier, the proposed amendment will not change the nature or character of the suit. If the order passed by the trial court is allowed to stand, it would certainly amount to miscarriage of justice.

8 Taking into consideration the facts and circumstances of the case and the principle enunciated in the case cited supra, I am of the considered view that this is a fit case to allow the Civil Revision Petition.

9 Accordingly, this Civil Revision Petition is allowed setting aside the order dated 06.10.2017 passed in I.A.No.258 of 2017 in O.S.No.258 of 2015 on the file of the Court of the Principal Junior Civil Judge, Adoni. Consequently I.A.No.258 of 2017 is allowed permitting the petitioner to amend the plaint. No order as to costs. As a sequel, miscellaneous petitions, if any pending in this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Dt: 19.07.2018

Kvsn