

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.NOs.980 AND 1021 OF 2018

COMMON ORDER:

These two Revisions arise out of the same suit between the same parties. So, they are disposed of with this common order.

Petitioners in both the Revisions are plaintiffs in O.S.No.27 of 2014 on the file of the Principal Junior Civil Judge, Vikarabad, Ranga Reddy District.

They filed the said suit against the respondents for perpetual injunction restraining the respondents from interfering with the peaceful possession and enjoyment of the petitioners over the suit schedule property.

The suit schedule property is described as an area admeasuring 99 square yards situated at Antharam Village, Dharoor Mandal, Ranga Reddy District.

Written statement was filed by the first respondent opposing the suit claim.

Along with the suit, the petitioners also filed I.A.No.80 of 2014 for temporary injunction invoking Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (CPC) and sought to restrain the respondents from interfering with the alleged peaceful possession and enjoyment of the petitioners over the suit schedule property pending disposal of the main suit.

Apparently, an Advocate Commissioner was appointed in I.A.No.80 of 2014 to note down the physical features of the suit schedule property and he filed a report on 01.10.2015.

When the said I.A.No.80 of 2014 was coming up for submission of arguments by the parties, the petitioners filed I.A.No.97 of 2014 in I.A.No.80 of 2014 to amend the schedule by substituting “285 square yards” in the place of “99 square yards”.

They also filed I.A.No.96 of 2017 for a like relief in the plaint.

In the affidavits filed in support of both the interlocutory applications, it was stated that while preparing arguments in the interlocutory application for the *ad interim* injunction, the first petitioner noticed that the extent of the land was wrongly typed as 99 square yards instead of 285 square yards in certain paragraphs and also in the schedule of the property and the same requires to be rectified. He also contended that the amendment would not change nature of the suit and would not prejudice the other side since it is only a typographical error.

Counter affidavit was filed by the respondent opposing the same. It is contended that the arguments in the interlocutory application for temporary injunction were already heard partly, that as per the report of the Advocate Commissioner, the extent is 99 square yards and not 285 square yards and under the guise of the amendment, the petitioners want to grab the land of the respondents by giving wrong boundaries and wrong measurements. It is also contended that the amendment would change the nature of the suit and it would set

up a new case which is totally inconsistent with the original case and the application was filed to fill up the lacunae after submission of arguments by the respondents.

By separate orders passed on 15.12.2017, both these applications were dismissed.

The Court below held that in I.A.No.80 of 2014, arguments were to be advanced from 2015 itself as the Advocate-Commissioner report was filed on 05.10.2015 and the present application filed in 2017 is not bonafide because petitioners did not take any steps to amend the I.A. during the period between 05.10.2015 and 2017. It was observed that the amendment is not justifiable and satisfactory.

Assailing the same, these two Revisions are filed.

Heard the counsel for the petitioners and counsel for the respondents.

Counsel for the petitioners contended that since the trial in the suit has not yet commenced the proviso to Order VI Rule 7 of CPC has no application, that there is no change in the nature of the suit and there is also only alteration in the area of the schedule property which was sought. He also contended that no prejudice would be caused to the respondents because they would have an opportunity to amend the written statement and file their defence to the amended claim.

Counsel for the respondents on the other hand supported the order passed by the Court below. He contended that the plea set up by the petitioners in the applications for amendment of the plaint and I.A.No.80 of 2014 are false pleas and so, they cannot be entertained.

It is settled law that while deciding whether or not to permit the application for amendment, the correctness on merits of the pleading sought to be raised by way of amendment cannot be gone into. Merely because an application for amendment is ordered, it does not automatically follow that the Court below would grant the said relief to the party who has sought amendment because the Court below would consider the defence of the opposite party also after trial and then decide the matter in accordance with law.

The suit was filed for perpetual injunction and if the amendment is ordered to the plaint schedule or in the body of the plaint by correcting the extent as 285 square yards instead of 99 square yards, the nature of the suit does not change and it continues to be the same.

Admittedly, the trial has not commenced and only the interlocutory application, I.A.No.80 of 2014 filed for temporary injunction, is coming up for addressing arguments.

Therefore, the proviso to Order VI Rule 7 of CPC has no application.

No prejudice would be caused to the respondents if the applications are allowed because they would have an opportunity to amend their pleadings and defend their case.

Merely because there is some delay in approaching the Court between 2015 and 2017 for seeking amendment, the Court below could not have rejected the applications for amendment.

For the aforesaid reasons, both the Revisions are allowed and the orders dated 15.12.2017 in I.A.No.97 of 2017 in I.A.No.80 of 2014 in O.S.No.27 of 2014 and I.A.No.96 of 2017 in O.S.No.27 of 2014 of the Principal Junior Civil Judge, Vikarabad, Ranga Reddy District, are set aside and both the I.As are allowed. There shall be no order as to costs.

Miscellaneous applications, if any, pending shall stand closed.

(M.S.RAMACHANDRA RAO, J)

7th June 2019
RRB

