

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.1861 and 2130 of 2018

COMMON ORDER:

These two Revisions arise out of the same suit and between the same parties, and so they are being disposed of by this common order.

2. Petitioner in both these Revisions is the plaintiff in suit O.S.No.115 of 2016 on the file of the Principal Junior Civil Judge, Husnabad.

3. He filed the said suit against the respondent for perpetual injunction restraining the respondent from interfering with his possession and enjoyment of the suit schedule property.

4. In the plaint, he alleged that he is the owner of the plaint schedule property having purchased it under registered Sale Deed dt.17.10.1985 and contended that he is in possession and enjoyment thereof, and was also issued pattadar passbook and title deed.

5. Written statement was filed by the respondent opposing the suit claim and contending that there is an oral purchase by the respondent from the petitioner under simple Sale Deed of the plaint schedule property and claiming that he

installed a saw-mill with a shed and a boundary wall therein. He also contended that the suit schedule property is not an agricultural land but there is an existing saw-mill and he disputed the possession of the petitioner over the suit schedule property.

6. Along with the plaint, petitioner had filed I.A.No.128 of 2016 seeking temporary injunction invoking Order XXXIX Rule 1 and 2 CPC reiterating the contents of the original plaint.

7. After the written statement was filed, petitioner filed I.A.No.88 of 2016 to amend the plaint stating that at the time when the plaint was filed, petitioner could not properly instruct his counsel because he was suffering from severe heart pain and he underwent a open-heart surgery in September, 2016 in KIMS Hospital, Hyderabad; that real facts about physical features of the suit schedule property were not properly mentioned in the legal notice or in the plaint, and so he should be permitted to amend the plaint by adding para 3B in the plant stating that he had purchased second hand saw-mill and got it installed in the suit schedule property by raising a temporary shed. He also sought for amendment of the plaint schedule by mentioning about the

existence of the saw-mill with compound wall, iron-gate and iron fencing.

8. Counter affidavit was filed to the said I.A. by the respondent contending that the amendment should not be permitted because the petitioner had approached the Court with unclean hands with a wrong cause of action and had made false allegations. He also contended that after filing of the written statement by him, the amendment application has been filed, and so it should be dismissed.

9. Petitioner also filed I.A.No.87 of 2016 seeking amendment in the said I.A.No.128 of 2016 reiterating the pleadings in the order VI Rule 17 CPC application (I.A.No.88 of 2016) filed by him to amend the plaint.

10. Counter affidavit was filed in I.A.No.87 of 2016 by the respondent reiterating the stand taken by him in the counter filed by him in I.A.No.88 of 2016.

11. Both the applications, I.A.No.87 and 88 of 2016, were dismissed by the Court below by a common order on 13.12.2017 stating that applications for amendment are not warranted and the parties are not allowed to travel beyond the pleadings of the other side and if the applications are allowed, it would take away crucial admissions of the plaintiff

in the plaint. It also observed that it is not clear which part of the suit schedule property is to be amended.

12. Challenging the same, these two Revisions are filed.

13. Firstly, trial in the suit has not yet commenced. So, proviso to Order VI Rule 17 CPC has no application.

14. Secondly, the view of the Court below that the parties to the suit cannot be allowed to travel beyond the pleadings of the other side, is not based on any legal principle or any precedent.

15. Parties are entitled to seek amendment of pleadings if, for any reason, proper pleadings were not taken initially and it is settled legal position that merits of the amendment cannot be considered while dealing with the application for amendment of the pleading.

16. When the petitioner had given a reason that he was unwell at the time of exchange of legal notice and filing of the suit and proper instructions were not given to his counsel, petitioner cannot be denied of an opportunity to amend the plaint.

17. Merely because the plaint is allowed to be amended, it does not mean that case of the petitioner/plaintiff in the

amended plaint is accepted by the Court at that stage, and it would be a matter for evidence to be adduced by both the parties in the Court to come to a conclusion on the merits of the claims of both parties.

18. I am also of the opinion that the Court below was not correct to state that allowing amendment would take away admissions of the plaintiff in the plaint, because the title to the property was pleaded in the plaint and there is no specific statement therein that the land is an agricultural land. I therefore hold that the Court below erred in dismissing I.A.Nos.87 and 88 of 2016.

19. Accordingly, both these Revisions are allowed; the impugned order dt.13.12.2017 in I.A.Nos.87 and 88 of 2016 in O.S.No.115 of 2016 of the Principal Junior Civil Judge, Husnabad, is set aside; and the said I.As., are allowed. No order as to costs.

20. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

12th April, 2019.

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