

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

CRP.No.1295 OF 2019

ORDER:

Heard Sri P.Krishna Reddy, counsel for the petitioners and Sri G.L.Narasimha Rao, Counsel for respondents 1 & 2. The 3rd respondent is served but there is no representation. Notice sent to 4th respondent is returned with endorsement 'unclaimed', and therefore he is deemed to be served.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.11.02.2019 in I.A.No.89 of 2018 in O.S.No.98 of 2013 of the II Additional Junior Civil Judge, Warangal, refusing to permit the petitioners to amend the plaint.

3. Initially the said suit was filed for Permanent Injunction restraining the respondents from interfering with the alleged possession and enjoyment of the petitioners in respect of items 1 to 3 of the suit schedule property, which are said to be located in Paidipally Village, Hanamkonda Mandal of Warangal District.

4. Before the trial started, petitioners filed I.A.No.89 of 2018 to amend the plaint by substituting the words 'Paidipally' with the word 'Mettawada' and to add two sub-paragraphs (a) & (b) in para 9 and also seeking amendment of prayer in the suit i.e. seeking relief of recovery of possession, for rectification of certain documents, etc.

5. In the affidavit filed in support of the said application, it is the contention of the petitioner that by mistake they mentioned in the plaint that the suit schedule properties are located in Paidipally but they are in fact located in Mettawada Revenue village; that there is no dispute about the boundaries and location of the plaint schedule properties; that during the pendency of the suit, the 1st respondent raised a compound wall dividing item Nos.1 to 3 of the plaint schedule into two pieces and constructed one zinc roofed room in each piece; that this was done on 13.02.2013 subsequent to the filing of the suit; and therefore petitioner was forced to seek relief of recovery of possession also.

6. By order dt.11.02.2019, the Court below dismissed the said application. While noting that the trial has not commenced, it observed that there is no right to seek amendment of the pleadings and that the burden is on the petitioner to show that despite due diligence the amendment could not be sought earlier.

7. Assailing the same, this Revision is filed.

8. The logic of the Court below is incomprehensible because the concept of due diligence would apply only if the trial had commenced and not otherwise, in view of the *proviso* to Order VI Rule 17 CPC.

9. It even went into the question whether the relief sought by way of amendment could have been granted and took note of the

contention of the respondents that the construction in question occurred prior to the filing of the suit and not after filing of the suit as alleged by the petitioners.

10. The Court below, in my considered opinion, is not entitled to go into the said question while deciding whether or not to permit amendment of the plaint by seeking relief of recovery of possession or rectification of document.

11. It also went into the question as to whether the petitioners can seek relief of rectification under Section 26 of the Specific Relief Act, 1963, which also it could not have done while considering whether or not to permit the amendment of the plaint.

12. Therefore, the impugned order cannot be sustained.

13. For the aforesaid reasons, this Civil Revision Petition is allowed; order dt.11.02.2019 in I.A.No.89 of 2018 in O.S.No.98 of 2013 of the II Additional Junior Civil Judge, Warangal, is set aside and the said I.A. is allowed. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

20th August, 2019.

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