

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.4169 of 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.09-03-2018 in I.A.No.1486 of 2015 in O.S.No.2033 of 2011 of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar.

2. Petitioner is plaintiff in the suit.
3. She filed the suit against respondents for perpetual injunction restraining the respondents from interfering with her possession and enjoyment of the plaint schedule property.
4. In the plaint, she claimed that she purchased Ac.7.00 gts in Sy.No.215 ('Aa') of Boduppall Village, Ghatkesar Mandal under a registered sale deed dt.24-09-1966 and when portions of this land were sought to be grabbed by third parties, she instituted L.G.C.No.45 of 2004 before the Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad against third parties; and in the said L.G.C., the said Court had appointed a Commissioner/Inspector Survey, Office of the Assistant Director, Survey and Land Records, Ranga Reddy District to find out in which survey number the LGC schedule land falls; and the Commissioner then filed a report stating that the plaint schedule property would form part of the petitioner's

property only, and that the property of respondents is in Sy.No.213 of the said village and not in Sy.No.215('Aa').

5. Petitioner also alleged that on 28-10-2011, there was a threat of eviction by respondents and therefore she filed the suit for injunction.

6. Written statement was filed opposing the suit claim.

7. Thereafter petitioner filed I.A.No.1486 of 2015 seeking amendment of the prayer in the plaint by adding certain paragraphs in the plaint and also seeking declaration of petitioner's title and recovery of possession. This I.A. was filed on 07-10-2015.

8. In the said I.A., she contended that respondents had taken a stand in the written statement that they purchased the suit schedule property under a registered sale deed dt.27-07-1989 and thus disputed her title and she is compelled to sue also for declaration of title. She also stated that respondents pleaded that since petitioner filed L.G.C.No.45 of 2004 against the predecessor of respondents, she is not in possession of the property and so she is also compelled to seek recovery of possession.

9. Counter-affidavit was filed by respondents opposing the said application and contending that petitioner is trying to change not only the entire nature of the suit, but is also trying to add new and additional pleadings which changes the very injunction suit self and this is impermissible in law. It is alleged that the husband of 1st respondent purchased the property under a registered sale deed dt.27-

07-1989, that he expired on 02-02-1999 itself and the 1st respondent had affixed a sign board in the plot in the suit schedule property in 2000 itself and these facts were suppressed as also the fact that L.G.C.No.45 of 2004 was dismissed against the husband of 1st respondent on the ground that he had expired even before filing of the L.G.C. It was also stated that L.G.C. was finally disposed of on 25-02-2011 and thereafter the present suit has been filed on 03-11-2011 for injunction simplicitor. It was also stated that I.A.No.1814 of 2011 filed by petitioner for temporary injunction pending suit had been dismissed on 23-10-2013 and the said order had become final and in that order, the Court below had held that petitioner was not in possession of the suit schedule property either on the date of filing of L.G.C.No.45 of 2004 or suit O.S.No.2033 of 2011.

10. By order dt.09-03-2018, the Court below dismissed the application for amendment. It stated that the suit was filed in the year 2011 and the trial in the main suit was to start on 30-12-2014, but no reason was given by the petitioner for not filing the application for amendment before the matter was posted for trial. It held that petitioner had prolonged the matter successfully for 4 years and now when the Court is pressing upon pre-2012 matters, petitioner filed this application to amend the plaint. It observed that if the petitioner was already declared as owner of the suit schedule property in L.G.C.No.45 of 2004, there was no necessity for petitioner again to

seek amendment of the prayer for declaration of title. It also stated that there is no mention in I.A. on what date the petitioner was allegedly dispossessed and by whom she was dispossessed; there is no due diligence on the part of the petitioner in seeking amendment to the plaint 8 years after filing of the suit; and that the whole character of the suit would be altered.

11. Assailing the same, this Revision is filed.

12. Heard Sri Muddu Vijai, learned counsel for petitioner and Sri T.Surya Satish, learned counsel for respondents.

13. It is not in dispute that the trial in the suit has not yet commenced. So, the proviso under Order VI Rule 17 C.P.C. would not come in the way of the Court to consider the application for amendment made by petitioner even if the application for amendment was filed 8 years after filing of the suit. Therefore, the observations of the Court below as to why the petitioner did not make the application for amendment before the Court posted it for trial and reference to due diligence made by the Court below, are not proper and correct.

14. Moreover, the purpose of permitting amendment of pleadings is to avoid multiplicity of proceedings. This fundamental principle seems to have been lost sight off by the Court below in considering petitioner's application for amendment.

15. Its further observation that allowing amendment of plaint would alter the complete nature of the suit, is also not correct since the Supreme Court in **Sampath Kumar Vs. Ayyakannu and another**¹ has held that when the plaintiff is debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending, in order to avoid multiplicity of suits, it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in such a suit.

16. This Court also in **Adusumilli Venkateswar Rao and another Vs. Chalasani Hymavathi**² has held that the plaintiff in a suit for permanent injunction is entitled to seek amendment for declaration and recovery of possession and such amendment does not alter the nature of the suit.

17. Since a cloud about the title of petitioner has been raised by respondents in the written statement filed by them, petitioner therefore felt it necessary to also seek the relief of declaration of title on the basis of the judgment in L.G.C.No.45 of 2004, and the petitioner cannot be prevented from seeking by way of amendment the relief of declaration of title also. It is not for the Court to advise the petitioner as to whether she can seek such an amendment or not.

¹ (2002) 6 SCC 424

² AIR 1990 AP 161

18. It is also a matter on record that application for temporary injunction has been rejected and finding was given that petitioner was not in possession of the plaint schedule property. So therefore the petitioner was seeking the relief of recovery of physical possession also.

19. Merely because the petitioner is allowed to amend the pleadings and prayers in the suit by seeking reliefs of declaration of title and recovery of possession in the place of perpetual injunction relief she sought earlier, that does not mean that the Court is bound to grant such a relief and the Court would any way consider the evidence adduced by both parties in support of their respective claims before deciding whether the petitioner is entitled to the said reliefs or not.

20. The Court below is also not correct in stating that petitioner ought to mention when she allegedly dispossessed and by whom. After the Limitation Act, 1963 came into operation, it is not necessary for the plaintiff to state when she is dispossessed unlike under the Limitation Act, 1908; and if the petitioner were to establish title, she would be entitled recovery of possession unless the defendant establishes better title and he is able to prove that he has acquired such title by adverse possession.

21. I am of the opinion that the Court below has committed grave error of jurisdiction in refusing to permit the petitioner to amend the plaint as sought by the petitioner.

22. Accordingly, the impugned order is set aside; the Civil Revision Petition is allowed; and I.A.No.1486 of 2015 in O.S.No.2033 of 2011 on the file of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar is allowed. No costs.

23. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-03-2019

Vsv

