

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.4231 OF 2018

ORDER :

This Revision is filed challenging the order dt.05.06.2018 in I.A.No.1470 of 2016 in O.S.No.330 of 2012 of the IX Additional Chief Judge, City Civil Courts, Hyderabad.

2. Petitioners are defendants 2 and 3 in the above suit.
3. The 1st respondent/plaintiff filed the said suit for declaration of title, cancellation of certain documents and for a perpetual injunction, etc.
4. In the plaint, 1st respondent/plaintiff contended that the 2nd respondent/1st defendant is his paternal grand mother, 1st petitioner/2nd defendant is his junior paternal uncle, 2nd petitioner/3rd defendant is the son of the 2nd defendant and 3rd respondent/4th defendant is the mortgagee of the schedule property from the 3rd defendant.
5. According to the 1st respondent/plaintiff, the suit schedule property was purchased by his paternal grand father and he had executed a Will on 02.01.1987 giving the said property to the 2nd respondent, who is his wife and also

mentioned therein that the property after her life time should belong to 1st respondent's father, K.Pandu.

6. He contended that by virtue of Section 14(1) of Hindu Succession Act, 1956, the limited rights given to 2nd respondent were transformed into absolute right; that the 2nd respondent became absolute owner of the suit schedule property and she executed a Gift Settlement Deed on 18.08.2001 in his favour; and that he accepted the same and he was also put in physical possession of the suit property.

7. Written statement was filed by the respondents/defendants opposing the suit contentions.

8. The 1st respondent/plaintiff then filed I.A.No.1470 of 2016 to amend the plaint alleging that at the time of filing of the suit he was in possession of the plaint schedule property; that he came to know that on 28.03.2015 petitioners/defendants 2 and 3, in his absence, illegally took possession of the suit schedule property and dismantled the existing structures and also illegally evicted the tenants of the petitioners; and so he was entitled to seek recovery of possession of the plaint schedule property.

9. Petitioners/defendants 2 and 3 filed a counter affidavit opposing the said application. They denied that the 1st

respondent/plaintiff was ever in possession of the plaint schedule property. They also denied the execution of the Gift Settlement Deed by the 2nd respondent/1st defendant on 18.08.2001 in the name of the 1st respondent/plaintiff. They contended that the Gift Deed was never acted upon and the possession there under was never delivered and the 1st respondent continued to be in possession and enjoyment of the suit schedule property. They contended that 1st respondent/plaintiff as well as the General Power of Attorney holder of the plaintiff were residents of United States of America and they denied that there was any trespass on 28.03.2015 as alleged by the 1st respondent/plaintiff.

10. By order dt.05.06.2018, the Court below allowed the said application. It held that at the stage of cross-examination of PW1 by defendants 2 and 6, this application has been filed seeking amendment of the plaint seeking recovery of possession; that according to the plaintiff there is subsequent change of events that occurred during the pendency of the suit; that correctness of the pleadings made by the petitioner about the alleged illegal occupation of the suit schedule property by petitioners/respondents 2 and 3/defendants 2 & 3, dismantling the structures in suit schedule property and the efforts to make new constructions

by them, are all issues for trial; and the plaintiff had no occasion to make such a prayer earlier. It further observed that the contention of the defendants that plaintiff was never in possession of the suit schedule property was also a fact to be decided in trial, and the proposed amendment would not change the nature of the suit and the relief of recovery of possession is only a consequential relief.

11. Challenging the same, this Revision is filed.

12. Counsel for the revision petitioners contended that the application filed by the 1st respondent/plaintiff seeking amendment of the plaint is belated; that in the Written Statement itself, the possession of the 1st respondent was denied; that it was asserted that 2nd respondent was in possession; the story now sought to be introduced by the 1st respondent about the alleged dispossession on 28.03.2015 by petitioners/defendants 2 and 3 is false; and the Court below ought not to have allowed the said application.

13. It is settled law that while deciding whether or not to allow an application for amendment, the correctness of the case set up by way of amendment cannot be gone into.

14. The only question to be considered is whether the 1st respondent/plaintiff could not have taken the pleading which

he now has taken by way of amendment, at the time when he instituted the suit in 2012.

15. When according to the 1st respondent/plaintiff, he lost possession because of subsequent events occurred on 28.03.2015, he could not have taken pleadings regarding these events in the suit instituted in 2012. So his application for amendment of plaint has rightly allowed by the Court below.

16. Whether the plea of the revision petitioners that 1st respondent/plaintiff was never in possession of the plaint schedule property or whether plea of the 1st respondent/plaintiff that he was in possession of the property till he was allegedly dispossessed on 28.03.2015, are correct or not, are matters for trial as rightly held by the Court below.

17. I therefore do not find any error of jurisdiction warranting interference by this Court in exercise of its power under Article 227 of the Constitution of India with the order passed by the Court below.

18. Accordingly, this Civil Revision Petition fails and it is dismissed. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

12th March, 2019.

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