

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.R.P. No.2067 of 2017

ORDER:

This Revision Petition is filed challenging the order dt.03.01.2017 passed in I.A. No.332 of 2015 in O.S. No.20 of 2014 by the Senior Civil Judge, Shadnagar, refusing the request of the petitioner to amend the plaint after the trial started.

2. The petitioner had filed the said suit against the respondent for specific performance of agreement of sale dt.11.12.2008 executed in his favour by the respondent and contending that though he had paid a sum of Rs.2,00,000/- as advance the respondent had not executed a regular registered sale deed in his favour.

3. Written statement was filed by the respondent denying the execution of the said agreement of sale and contending that he merely borrowed some money from the petitioner in December, 2008 at which time his signatures were taken on one blank stamp paper and on other white papers as a security for loan. Though he repaid the loan, the documents were not returned and the said agreement was fabricated on the said documents.

4. After framing all issues, the trial started and P.W.1 was examined and also cross-examined by the respondent.

5. Thereafter, chief examination affidavit of P.W.2 was filed.

6. At that stage, the petitioner sought to amend the plaint by filing I.A. No.332 of 2015 alleging that after the suit agreement was executed, he offered to sell the suit schedule property to P.W.2 and also executed an agreement of sell dt.29.12.2008 in his favour after receiving Rs.1,65,000/- and that he delivered the physical possession of the suit land to the P.W.2. He contended that the respondent, his son and daughter were also attesting witnesses to the receipt dt.28.03.2009 executed by the petitioner in favour of the P.W.2. He admitted that he did not mention about this transaction in the plaint claiming that he was under the impression that because he had not become the owner of the suit schedule property there was no necessity to mention it. According to him, certain payments were also made by P.W.2 to Primary Agricultural Society Cooperative Society Limited, Kondurg but the said payment receipts were not allowed to be marked by the Court in I.A. No.113 of 2015 filed under Order VII Rule 14(3) read with Section 151 CPC as there was no pleading in the plaint about agreement dt.29.12.2008. He stated that due to *bona fide* mistake, he did not mention about the agreement dt.29.12.2008 and so he may be permitted to amend the plaint by incorporating new pleading with regard to the same.

7. This application was opposed by the respondents to contend that once the trial started such application cannot be maintained. He also reiterated the contents of the written statement. He alleged that

the petitioner and P.W.2 colluded with each other and are trying to create confusion.

8. By order dt.03.01.2017, the Court below dismissed the said application observing that the respondent had already cross-examined P.W.1 regarding the transaction between him and P.W.2, and if the application is allowed, it will cause prejudice to the case of the respondent. It also observed that the petitioner did not prove that in spite of due diligence he could not take steps for amendment of the plaint, before commencement of the trial.

9. Assailing the same, present Revision is filed.

10. The counsel for the petitioner sought to contend that by oversight, the petitioner did not mention about the agreement dt.29.12.2008 executed by him in favour of P.W.2 in the original plaint. Even if it is true, nothing prevented the petitioner from seeking amendment of the plaint before the trial started and no explanation is forthcoming from the petitioner why he did not mention about the agreement of sale dt.29.12.2008 by seeking amendment before the commencement of trial. Therefore, the Court below is right in holding that the petitioner did not show due diligence.

11. Since trial has already commenced, proviso to Order VI Rule 17 CPC is a bar to the petitioner for seeking amendment of the plaint.

12. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court in

exercise of power under Article 227 of the Constitution of India with the impugned order.

13. Accordingly this Revision Petition fails and is dismissed. There shall be no order as to costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 22.04.2019
LSK

