

HON' BLE SRI JUSTICE M. S. RAMACHANDRA RAO

CIVIL REVISION PETITION No. 6129 of 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 28.08.2018 in I.A.No.145 of 2016 in O.S.No.722 of 2004 of the II Additional Junior Civil Judge at Warangal.

The petitioner is the second plaintiff in the suit.

The plaintiff filed the said suit for perpetual injunction to restrain the respondents to interfere with the valid peaceful possession and enjoyment of the suit schedule property, claiming to be in possession of the said property.

Initially, no written statement was filed and so the respondents were set *exparte* and an *exparte* decree was passed on 28.01.2005.

Later, they filed I.A.No.980 of 2005 and I.A.No.1353 of 2005 to set aside the *exparte* decree and those applications were allowed on 19.10.2010 and the suit was restored to the file of the Court.

Thereafter, respondent Nos.1 and 2 filed written statement on 22.11.2010. In the written statement, they denied the title and possession of the petitioner/plaintiff over

the suit schedule property, and alleged that their vendor Ch.Sudeshnadevi had raised sheds, compound wall, gate etc.

In view of the plea taken in the written statement for the first time by the respondents, petitioner filed I.A.No.145 of 2006 to amend the plaint by adding paragraphs in the body of the plaint and also to amend the plaint by seeking relief of mandatory injunction directing the respondents to remove the walls constructed around the suit land taking a specific plea that Ch.Sudeshnadevi and others, during the pendency of the suit, along with respondent No.2 forcibly raised the compound wall.

Counter affidavit was filed by the respondents opposing the application for amendment and specifically contending that the compound wall and other structures were constructed prior to the filing of the suit.

By order dated 28.08.2018, the Court below dismissed the application for amendment. It observed that raising of structures was mentioned by the respondents in the written statement filed on 22.11.2010, that the application for amendment was filed in the year 2016 and there is a bar on limitation because the petitioner was aware from the written statement as to when the compound wall was constructed.

Assailing the same, this Revision is filed.

Learned counsel for the petitioner contended that the view taken by the Court below is not correct because the date

when the compound wall is constructed is question of fact and mere pleading of the respondents in the written statement cannot be accepted as the gospel truth.

Though the learned counsel for the respondents tried to support the order passed by the Court below, it is a settled law that while deciding whether or not to permit amendment of pleadings, the merits of the case set up in the amendment cannot be gone into by the Court below. Unfortunately, in the instant case, the Court below accepted as gospel truth, the statement in the written statement by the respondents that the structures in the subject land were constructed prior to 22.11.2010, which it ought not have done and so it erroneously came to a conclusion that the proposed amendment is barred by limitation.

Whether the compound wall was constructed prior to suit or after the suit or whether even if it is constructed after the suit whether petitioner is not entitled to the relief of mandatory injunction or not are the matters to be gone into after the trial concludes at the time when the suit is being finally decided.

Therefore, the order dated 28.08.2018 in I.A.No.145 of 2016 of the II Additional Junior Civil Judge at Warangal is set aside; and the said I.A. is allowed. The Court below shall permit the respondents to file additional written statement or amend their written statement by taking all pleas including the plea of limitation, if they are so advised; frame appropriate

issues on all the points of contest between the parties; and then decide the suit, in accordance with law.

Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

09.04.2019
vnb

M.S. RAMACHANDRA RAO

