

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION Nos.6156 and 6292 of 2018

COMMON ORDER :

In both these Revisions, since common question arises and since the petitioner is one and the same, they are being disposed of by this common order.

2. Petitioner is plaintiff in O.S.Nos.997 of 2007 and 998 of 2007 on the file of the VII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

3. She filed the said suits to cancel the sale deeds dt.29-04-2004 and 24-10-2005 and for consequential injunction.

4. She filed interim injunction applications invoking Order 39 Rules 1 and 2 C.P.C. in both the suits, but the said applications were dismissed. She then challenged the same by filing C.M.As. before the IV Additional District Judge, Ranga Reddy District at L.B. Nagar, which were also dismissed.

5. Thereafter petitioner filed I.A.No.898 of 2018 in O.S.No.997 of 2007 and I.A.No.964 of 2017 in O.S.No.998 of 2007 seeking to amend the plaint by seeking the relief of recovery of possession in addition to the relief of perpetual injunction sought for in the plaint originally.

6. She mentioned about the above facts and stated that the relief of recovery of possession is a consequential prayer and no prejudice would be caused if the said amendment is permitted.

7. These applications were filed in November, 2017.

8. Counter-affidavit was filed by respondents opposing these applications and taking the plea that it would amount to change the pleading and the application is time barred. It is also contended that application for amendment is filed more than 12 years since filing written statement in November, 2007, and therefore the applications are barred.

9. By two separate orders dt.06-09-2018, the Court below dismissed both the applications.

10. The Court below observed that in the plaint, petitioner claimed to be in possession of the property, and it is her duty to explain when she lost possession over the schedule property and how she lost it and when 4th respondent came into possession of the suit schedule property. It also observed that there is no cause of action at all to seek amendment.

11. Assailing the same, these Revisions are filed.

12. Learned counsel for petitioner contended that the view expressed by the Court below cannot be sustained. He also contended that application for amendment of plaint by adding relief of recovery of possession in addition to the relief of injunction by way of

alternative relief by way of amendment can be sought and it does not alter cause of action in the suit.

13. Learned counsel for respondents however supported the orders passed by the Court below, and also contended that the amendment would alter the complete nature of the suit.

14. I have noted the contentions of both sides.

15. The observation of the Court below that allowing amendment of plaint would alter the complete nature of the suit, is 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 him to seek the relief of declaration of title and recovery of possession by way of amendment.

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 of title and recovery of possession and such amendment does not alter the nature of the suit.

¹ (2002) 6 SCC 424

² AIR 1990 AP 161

17. This principle has also been followed by this Court in the order dt.08-03-2019 in C.R.P.No.4169 of 2018. In the said judgment, it was also held that there is no necessity for plaintiff to mention when she was 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 or he is able to prove that he has acquired such title by adverse possession.

18. In view of the said principle laid down in the above cases, the view of the Court below that petitioner should explain when she lost possession and when 4th respondent came into possession or how she lost possession, cannot be sustained.

19. Accordingly, both the Civil Revision Petitions are allowed; the order dt.06-09-2018 in I.A.No.964 of 2017 in O.S.No.998 of 2007 and order passed in I.A.No.898 of 2018 in O.S.No.997 of 2007 are both set aside; and said I.As. are allowed. Respondents are permitted to file amended written statement taking all pleas available to them under law. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-08-2019

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