

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No. 5763 of 2017

ORDER:

This Revision is filed challenging the order dt.08.09.2017 in I.A.No.211 of 2017 in O.S.No.12 of 2010 of the Junior Civil Judge, Narayanpet refusing to permit the petitioner/plaintiff to amend the plaint in the suit seeking relief of 'Declaration of Title' in addition to the relief of injunction sought in the plaint originally.

2. It is the contention of the counsel for the petitioner that at the stage of arguments in the suit, the Court below decided to frame an additional issue to the affect "*whether a simple injunction suit is maintainable without seeking relief of declaration of title?*" in view of the defendant/respondent setting up title by denying the title of the petitioner. He contends that in view of framing of said additional issue, petitioner is obligated to seek the relief of 'Declaration of Title' in addition to the relief of injunction sought originally in the suit.

3. Counter affidavit is filed by the respondents opposing the amendment proposed by the petitioner. They contend that the application for amendment is filed at a belated stage after the evidence is concluded as an afterthought.

4. By order dt.08.09.2017, the Court below dismissed the said application holding that such a plea is barred by limitation and

also on the ground that there is delay in seeking amendment of the plaint.

5. Counsel for the respondents supported this view of the Court below and contended that once the trial has begun, application for amendment should not, normally, be entertained and also contended that the relief of 'Declaration of Title' is barred by limitation.

6. The occasion to the petitioner to seek the relief of 'Declaration of Title' arose in view of the framing of an additional issue by the Court below at the stage of arguments in the suit.

7. Since the Court below indicated its intention to go into the issue of maintainability by itself framing such an additional issue and this came to light only during arguments, petitioner cannot be denied an opportunity to seek amendment of the plaint by also seeking the relief of 'Declaration of Title' in addition to the relief of injunction originally sought.

8. The Court below therefore erred in dismissing the application for amendment.

9. Accordingly, this Civil Revision Petition is allowed; the order dt.08.09.2017 passed in I.A.No.211 of 2017 in O.S.No.12 of 2010 of the Junior Civil Judge at Narayanpet is set aside and the said I.A. is allowed. However, the respondents are entitled to take the plea of 'bar of limitation' for grant of relief of 'Declaration of Title'

to the petitioner in the amended written statement, which they are entitled to file, and the Court below shall also frame an issue in that regard and then decide it, after hearing both sides, in accordance with law. All the observations of the Court below on the aspect of 'bar of limitation' in the impugned order are also set aside and the said issue is left open to be considered by the Court below. Both parties are also given liberty to adduce fresh evidence, if they so desire. No order as to costs.

10. Consequently, miscellaneous petitions pending if any, in all the Revisions, shall stand closed.

M.S. RAMACHANDRA RAO, J

18th July, 2019.

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