

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.6915 of 2018

ORDER :

This Civil Revision Petition is filed challenging the order dt.25.10.2018 passed in I.A.No.639 of 2018 in O.S.No.85 of 2012 on the file of the Additional Senior Civil Judge, Karimnagar.

2. The petitioner herein is plaintiff in the above suit.

3. He filed the said suit on 04.04.2012 contending that on 29.03.2012 he was dispossessed by respondent and that the respondent after occupying the said land had started construction activity therein. He not only sought for declaration of title and recovery of possession, but also sought for a perpetual injunction restraining the respondent from interfering upon the suit schedule land in any manner, and also for declaration that the registered sale deed dt.02.06.2010 under which the respondent allegedly purchased the suit schedule property is null and void and not binding on the petitioner.

4. Written Statement was filed by respondent opposing the suit claim and taking a plea that construction was made for residential building after obtaining permission from the Municipal Corporation of Karimnagar even by the date of filing of the suit.

5. However, in his deposition, the respondent admitted that the date on which he obtained permission from the Municipal Corporation, Karimnagar was 22.05.2012, i.e., after filing of the suit.

6. The petitioner herein then filed I.A.No.639 of 2018 under Order VI Rule 17 of Civil Procedure Code, 1908 to amend the plaint by seeking relief of mandatory injunction to demolish the building bearing Door No.10-4-267/2/1 or any other structures existing on the land, and deliver vacant possession thereon to petitioner. He relied on the statement of respondent in Chief-examination and Cross-examination about the grant of permission from the Municipality after filing of the suit, and contended that the building was constructed after filing of the suit and so relief of demolition of structure of the building could not have been sought as on the date of filing of the suit. He contended that the event being a subsequent event, he is entitled to amend the plaint by taking appropriate pleadings and also seeking relief of mandatory injunction.

7. Counter-affidavit was filed by respondent opposing the I.A., and denying that he completed construction work after filing of the suit and also denying that during the course of evidence he had admitted about making structures in the suit after its institution. The plea of bar of limitation has also been raised.

8. By order dt.25.10.2018, the Court below dismissed the said application. It opined that petitioner was aware at the time of filing of the suit on 04.04.2012 that there were constructions in the suit schedule property but did not take any steps since then, and at the stage of arguments, the application for amendment was filed.

9. It also opined that there was no due diligence on the part of petitioner, and he did not raise the matter before commencement of the trial.

10. Assailing the same, the present Civil Revision Petition is filed.

11. The counsel for petitioner contended that when the completion of construction is after filing of the suit and according to the evidence of D.W.1, permission from the Municipal Corporation, Karimnagar itself was obtained on 22.05.2012 after filing of the suit on 04.04.2012, the petitioner cannot be denied an opportunity to amend the prayer in the suit, since such a relief could not have been asked at the time of filing of the suit because the construction had just begun.

12. Though the counsel for respondent refuted the said contentions and sought to support the order passed by the Court below, once it is clear that the permission for construction itself was granted on 22.05.2012 by the Municipal Corporation, Karimnagar to the respondent after filing of suit on 04.04.2012 it cannot be believed that the building itself was constructed prior to filing of the suit, as is being alleged by the respondent. The petitioner cannot be deprived of an opportunity to amend the prayer in the suit, particularly when the proposed amendment is to avoid multiplicity of proceedings.

13. Therefore, the impugned order dt.25.10.2018 passed in I.A.No.639 of 2018 in O.S.No.85 of 2012 on the file of the Additional Senior Civil Judge, Karimnagar is set aside; the said I.A. is allowed.

The Court below is directed to give opportunity to both parties to lead evidence afresh if they so desire and then proceed to decide the suit on merits.

14. Accordingly, the Civil Revision Petition is allowed. No order as to costs.

15. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11.06.2019

Ndr/*

