

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION NO.7114 OF 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 05.10.2018 in I.A. No.446 of 2018 in O.S. No.187 of 2017 of the Additional Junior Civil Judge at Malkajgiri at Ranga Reddy District.

The petitioner is the plaintiff in the said suit.

He filed the said suit against the respondent for a perpetual injunction restraining the respondent from interfering with his alleged possession and enjoyment of the suit schedule property.

Written statement was filed by the respondent opposing the suit claim and contending that the parents of the respondent, who had died in the year 2004, had purchased a property through registered sale deed dated 22.10.1997 and the petitioner had no right, title or interest in the suit schedule property.

Thereafter, respondent filed I.A. No.446 of 2018 seeking amendment of the written statement by taking certain additional pleas that his parents has executed two wills on 05.09.2003 bequeathing their shares in the plaint schedule property to him. Certain other pleas were also raised.

Counter-affidavit was filed by the plaintiff opposing the said application. It is contended therein that chief-examination affidavit of the petitioner had already been filed on 25.01.2018 and certain exhibits were marked on the same day, that it was coming up for examination of P.W-1 on 15.02.2018, and since then the respondent was dragging on the matter and then he filed this application. It is contended that the Will deeds pleaded in the amendment, which were filed along with the

application for amendment, were manipulated and forged ones. It is contended that since the parents of the respondent sold away the plaint schedule property to the petitioner in the year 2000 under registered sale deed dt. 12.06.2000, they could not have executed any Will in the year 2003.

By order dt.05.10.2018, the court below allowed the said application stating that the correctness of the pleadings taken by the respondent in the application for amendment cannot be adjudicated while deciding whether or not to allow the amendment application and can only be decided upon the full-fledged trial.

Assailing the same, this Revision is filed.

Counsel for the petitioner contended that the trial having already commenced and chief-examination affidavit having been filed by the time the application for amendment was filed, the court below could not have entertained the same and allowed it.

In my considered opinion, cross-examination of the P.W-1 not having been done, it cannot be said that the application filed by the respondent seeking amendment of the written statement is not prohibited.

In any event, the correctness of the pleadings raised in the proposed amendment cannot be gone into while deciding whether or not the amendment application has to be allowed.

The further contention of the counsel for the petitioner that new facts cannot be pleaded in the application for amendment which were not pleaded originally is also rejected, because if the said contention of the petitioner is accepted, then no application for amendment can even be allowed.

Therefore, I do not find any error of jurisdiction in the order passed by the court below warranting interference by this court with the impugned order. Accordingly, the Revision fails and is dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 25.07.2019

MRKR

