

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.488 OF 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioner/plaintiff aggrieved by the order, dated 25.09.2018, passed in I.A.No.450 of 2010 in O.S.No.167 of 2006 by the Principal Junior Civil Judge, Vikarabad, Ranga Reddy District, wherein the subject Interlocutory Application filed by the revision petitioner/plaintiff, under Order VI Rule 17 C.P.C., seeking to amend the plaint at paragraph No.4, cause of action and prayer portion, was dismissed.

2. Heard the learned counsel for both sides and perused the record.

3. Learned counsel for the revision petitioner/plaintiff would submit that the subject Suit is filed by the revision petitioner/plaintiff for perpetual injunction. Thereafter, on coming to know about the execution of Sale Deed bearing No.2667 of 2005, dated 29.08.2005, the revision petitioner/plaintiff immediately filed the subject Interlocutory Application seeking to amend the plaint at paragraph No.4, cause of action and prayer. The amendment sought in the prayer portion is to declare the revision petitioner/plaintiff as the absolute owner and possessor of the suit schedule property and to declare that the Sale Deed bearing No.2667 of 2005, dated 29.08.2005, is not binding on the revision petitioner/plaintiff. The amendment was not sought belatedly. As the revision petitioner/plaintiff was suffering from ill-

health for two years, he could not come to know of the averments in the written statement filed by the respondent/defendant i.e., with regard to the execution of Sale Deed bearing No.2667 of 2005, dated 29.08.2005. Having come to know of the same, immediately the revision petitioner/plaintiff sought the amendment, as indicated above. A comprehensive Suit is required to be adjudicated in between the parties to the litigation and ultimately, prayed to set aside the impugned order and allow the subject Interlocutory Application. In support of his contentions, learned counsel relied upon the decision reported in Mohd. Ikramuddin v. Sangram Bosle and others<sup>1</sup> and ultimately prayed to allow the revision petition as prayed for.

4. Learned counsel for the respondent/defendant would submit that after filing of the chief affidavit i.e., after commencement of trial, without there being any explanation for the delay, the subject Interlocutory Application was filed. Though the revision petitioner/plaintiff contended that he suffered with illness for two years, no medical record is filed to substantiate the same. The proposed amendment changes the nature of the Suit. Further, the revision petitioner/plaintiff is required to file a separate Suit/application seeking to cancel the Sale Deed bearing No.2667 of 2005, dated 29.08.2005. Therefore, the Court below is justified in dismissing the subject Interlocutory Application and ultimately, prayed to sustain the impugned order.

---

<sup>1</sup> 2007 (3) A.P.L.J. 147 (HC)

5. In view of the submissions made by both sides, the point that arises for determination is as follows:

*“Whether there are merits in this Civil Revision  
Petition to allow?”*

6. POINT: There is no dispute with regard to the revision petitioner/plaintiff filing the subject Interlocutory Application seeking amendment of the plaint at paragraph No.4, cause of action and prayer. The amendment sought in the prayer portion is to declare the revision petitioner/plaintiff as the absolute owner and possessor of the suit schedule property and to declare the Sale Deed bearing No.2667 of 2005, dated 29.08.2005, as not binding on the revision petitioner/plaintiff. Learned counsel for the respondent/defendant would submit that the subject Interlocutory Application was filed belatedly. Whether the amendment sought is within limitation or not, is a mixed question of fact and law. The reason assigned by the revision petitioner/plaintiff is that he suffered with illness for two years, and therefore, he could not know the averments in the written statement and after getting cured, when he approached his Advocate, he came to know about the averments in the written statement and filed the subject Interlocutory Application. It is also contended by the respondent/defendant that the revision petitioner/plaintiff ought to have filed a separate Suit/application seeking cancellation of the Sale Deed, dated 29.08.2005. In Mohd. Ikramuddin's case (supra), it was held that when the plaintiff is not a party to a registered Sale Deed, he need not seek cancellation of the same. In

the instant case, there is a serious dispute in between the parties to the litigation with regard to the title and possession. A comprehensive suit is required to be filed by either of the parties to the litigation to decide the title and possession of the parties over the suit schedule property. The revision petitioner/plaintiff has explained the delay that caused in filing the subject Interlocutory Application after commencement of trial. Furthermore, the substantial issues, such as determination of title and possession, are necessary for effective and complete adjudication of the subject matter of the Suit. Under these circumstances, the Court below ought to have allowed the subject Interlocutory Application, as prayed for.

7. Accordingly, the Civil Revision Petition is allowed and the impugned order, dated 25.09.2018, passed in I.A.No.450 of 2010 in O.S.No.167 of 2006 by the Principal Junior Civil Judge, Vikarabad, Ranga Reddy District, is set aside. Consequently, I.A.No.450 of 2010 is allowed as prayed for. No order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

February 24, 2020.  
MD

\_\_\_\_\_  
Dr. SHAMEEM AKTHER, J