

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.2545 of 2019

ORDER:

This civil revision petition is filed against the order dated 25.07.2019 passed by the Principal Junior Civil Judge, at Siricilla (for short, 'the trial Court'), in I.A.No.171 of 2018 in O.S.No.82 of 2012. By the impugned order, the trial Court dismissed the application filed by the petitioner/plaintiff, under Order VI Rule 17 of Code of Civil Procedure read with Rule 28 of Civil Rules of Practice, seeking amendment of plaint.

Heard Sri V.V. Ramana Rao, learned counsel for the petitioner, and Sri E. Ganesh, learned counsel for respondents 1 to 3.

It is the specific case of the petitioner/plaintiff that while she had filed the suit initially seeking injunction on account of unauthorized and illegal interference of the defendants / respondents in and around April 2017, the petitioner's father-in-law was suffering due to ill health and she was attending to him and eventually in May 2017, her father-in-law passed away and the house was locked temporarily for some time. Taking advantage of the absence of the petitioner, the respondents broke open the lock and occupied the open space on 03.12.2017. In spite of the efforts made to persuade the defendants to vacate the illegal occupation, they did not heed to the request of the petitioner. A police complaint was also lodged, however, the police directed the petitioner to avail the remedies available in Civil law. In those circumstances, it has become necessary for the petitioner to seek amendment of plaint.

No counter affidavit is filed by the respondents, denying the allegations of the petitioner and opposing the relief of amendment of plaint sought by the

plaintiff in the I.A.No.171 of 2018, however, the learned Junior Civil Judge dismissed the amendment application filed by the petitioner.

The amendment application came to be dismissed stating that the petitioner had failed to mention as to how she came to be aware of the illegal occupation, and further the details with respect approaching the defendants questioning their illegal occupation, particularly, the date and time of approaching the defendants. Further, she had not filed any proof of approaching the police or higher authorities in order to believe her averments in the affidavit; and thus, the petitioner had failed to take necessary steps as a prudent person and therefore the version of the plaintiff is not believable.

It is also further stated by the learned Junior Civil Judge that in a suit for recovery of possession, there must be averments with regard to title over the plaint schedule property, and the plaintiff is required to substantiate the same by proving that she is the owner of the property, and as the petitioner had not sought declaration of title, the petitioner would not be entitled to seek recovery of possession. Further, the reasons with respect to the merits of the matter were also mentioned.

A perusal of the reasons stated by the learned Junior Civil Judge basically touch the merits of the matter i.e., whether the final relief would be granted or not in the suit; and not with respect to the maintainability or objections with respect to the amendments sought by the plaintiff in the I.A.No.171 of 2018.

It may be noted that in terms of Order VI Rule 17, the Court is required to consider the nature of relief that is being sought, and whether the same in any manner changes the nature of the suit. In the present case, though the suit was filed for injunction, praying that the respondents are interfering illegally,

however, during the pendency of suit, as there is alleged illegal trespassing and occupation of the property by the respondents by breaking open the lock, the petitioner sought further prayer seeking amendment of that portion of the property which is alleged to have been occupied forcibly by the defendants.

It may also be noted that the alleged illegal occupation was in the month of December, 2017, and the amendment petition was filed on 18.01.2018 i.e., within two weeks from the date of alleged illegal occupation. As it is settled that amendment of plaint can be sought at any point of time, and there being no delay in preferring amendment application, and further the reasons stated by the learned Junior Civil Judge are not with respect to maintainability or otherwise of the amendment petition, but in relation to final merits of the matter, the dismissal of I.A. is not in order. In those circumstances, the civil revision petition is liable to be allowed.

Accordingly, the civil revision petition is allowed, setting aside the impugned order dated 25.07.2019 passed by the trial Court, with a further direction to the trial Court to take necessary further steps for adjudication of the suit by allowing amendment petition. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

31st January, 2020

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