

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. Nos.2700, 2702, 2704 and 2708 of 2019

COMMON ORDER:

These four Revisions arise between the same parties out of the same suit. So, they are being disposed of by this common order.

2. The petitioners in all these Revisions are plaintiffs in O.S.No.1638 of 2015 on the file of the VII Junior Civil Judge, City Civil Court, Hyderabad.

3. The said suit was filed by petitioners against the respondent for the following reliefs:

“I. To restraining the defendant from interfering or obstructing the plaintiffs or their tenants in using common parking area abutting to the premises bearing No.1-7-145/2/C of the Schedule Property towards Northern Side from East to West and also from North-West Corner to South-West Corner of the Schedule property as shown in the Plan annexed to the Registered Will Deed dt.18-01-2010 in keeping their two wheelers.

II. To restraining the defendant from interfering or obstructing the plaintiffs in using the common bathroom under the Stair Case in the Ground Floor of the Schedule property.

III. To restraining the defendant from interfering or obstructing the plaintiff No.1 herein to use internal iron Gate existing at South-West corner of the premises bearing No.1-7-145/2 of the Schedule property as shown in the plan annexed to Will Deed dt.18-01-2010.

IV. To restraining the defendant from using two small rooms measuring 4x4 existing over Two Water Sumps in the common area of the Schedule Property.”

4. As can be seen from the above, one of the reliefs relate to an iron gate existing on the South-West corner of the premises bearing No.1-7-145/2, which is one of the suit schedule properties.

5. After trial was concluded and the case was posted for arguments, four I.As. were filed by petitioners. I.A.No.502/2019 to reopen the case for plaintiffs' evidence, I.A.No.503/2019 to accord permission to the plaintiffs to amend the payer portion (iii) by deleting the words 'South-West', I.A.No.504/2019 the reopen and recall P.W.1 to lead evidence, and I.A.No.505/2019 under Order VII Rule 14(3) C.P.C. to receive certain photographs in relation to the gate.

6. By separate orders passed on 28-10-2019, the Court below dismissed all the applications stating that evidence was already adduced by petitioners as P.Ws.1 to 3; that Advocate-Commissioner was also appointed to note down the physical features and a report has been filed in the Court below along with photographs; and the said Advocate-Commissioner was also cross-examined on 28-06-2019. It recorded that the petitioners have extensively cross-examined the respondent as D.W.1 and evidence of both sides was closed on 28-06-2019 and the matter was posted to 05-07-2019 for submission of final arguments. It observed that matter was dragged on thereafter and on 09-08-2019, the instant applications have been filed. It is alleged that at this stage, the prayer in the plaint cannot be permitted to be amended; and the petitioners cannot be allowed to bring on record any additional evidence to cover up their

laches. It observed that these applications are filed only to delay and drag on the proceeding and the applications are without merits.

7. Assailing the same, these Revisions are filed.

8. Learned counsel for petitioners contended that in the cross-examination of respondent/defendant, he stated that there was no gate in the disputed area which was not proved; that the petitioners should be allowed to file three photographs along with C.D. which may be taken as part of record and otherwise grave and irreparable loss would be caused to the petitioner; and it is necessary to reopen the evidence on their side and to recall P.W.1 to mark the said evidence on record.

9. He also contended that the Court below ought to have permitted amendment of the plaint mentioning that the gate is existing at the South-East and by deleting the words 'South West'.

10. Admittedly, the trial in the suit has been completed long back. It is settled law that applications for amendment of plaint cannot be permitted unless the person seeking amendment is able to satisfy the Court that in spite of due diligence he could not seek amendment before the trial is commenced.

11. A reading of the affidavit filed in I.A.No.503/2019, merely mentioned that there was a typographical and clerical mistake in the prayer portion of the plaint, which had been drafted and filed by the earlier Advocate. Other than that, there is no mention by the petitioners about any circumstance which prevented them from seeking amendment

of the plaint before the trial commenced. Therefore, I see no reason to interfere with the order passed by the Court below dismissing I.A.No.503/2019.

12. Coming to I.A.No.505/2019, which was filed for receiving three photographs along with C.D. to prove the existence of gate in the disputed area, the petitioners had already examined three witnesses and elaborately cross-examined the respondent/defendant. They also cross-examined the Advocate-Commissioner, who filed his report in the Court below. Therefore, at this stage, if the petitioners were allowed to produce this material, there would be *de novo* trial further delaying the disposal of the suit.

13. As rightly held by the Court below, it appears that these applications along with other two applications i.e. 502/2019 and 504/2019 appears to have been filed only to delay the disposal of the suit without any *bona fides*.

14. Therefore, I do not see any merit in these Revisions and they are accordingly dismissed.

15. Interim order granted earlier shall stand vacated. No costs.

16. Pending miscellaneous petitions, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

Date : 24-01-2020

Vsv