

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.4453 OF 2018

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 17.07.2018, passed in I.A.No.404 of 2018 in O.S.No.112 of 2010 by the Principal Senior Civil Judge, Mancherial, Mancherial District, wherein the subject Interlocutory Application filed by the revision petitioner/plaintiff, under Order VI Rule 17 read with Section 151 C.P.C., seeking to permit the revision petitioner/plaintiff to amend the plaint as per the annexure appended to the subject Interlocutory Application, along with consequential amendments, 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 Original Suit was filed for declaration of title, perpetual injunction and to declare the Sale Deed, dated 27.03.2010, executed by respondent Nos.1 to 7/defendant Nos.1 to 7 in favour of respondent No.9/defendant No.9, as not valid and binding on the revision petitioner/plaintiff. During pendency of the said Suit, registered Sale Deed, dated 05.12.2011, executed by respondent Nos.1 to 7/defendant Nos.1 to 7 in favour of respondent No.18/defendant No.18 and registered Sale Deed, dated 11.09.2013, executed by respondent No.18/defendant No.18

in favour of respondent No.19/defendant No.19 were brought into existence, and respondent No.19/defendant No.19 occupied the suit schedule property and raised structures. Since there was dispossession of the revision petitioner/plaintiff and construction of a house in the suit schedule property, after filing of the subject Suit, amendment of the plaint, seeking recovery of possession and cancellation of Sale Deeds, dated 05.12.2011 and 11.09.2013, was sought. The revision petitioner/plaintiff was diligent in pursuing the subject Suit. The substantial question with regard to title and entitlement of the revision petitioner/plaintiff in respect of the suit schedule property is required to be determined in the subject Suit. Moreover, the proposed amendment is within limitation and ultimately, prayed to allow the subject Interlocutory Application, as prayed for, by setting aside the impugned order. Learned counsel, in support of his submissions, relied on a decision of the Honourable Supreme Court in *Surender Kumar Sharma v. Makhan Singh*¹.

4. On the other hand, learned counsel for the respondents/defendants would submit that the subject Suit was filed in the year 2010. Issues were framed on 05.09.2010. Thereafter, several opportunities were given to the revision petitioner/plaintiff to file chief affidavit and proceed with the subject matter of the Suit, but the revision petitioner/plaintiff has not completed her evidence. Further, the subject Interlocutory Application was filed belatedly in the year 2018. No tenable

¹ Laws (SC)-2009-9-45

explanation was given in the subject Interlocutory Application for the delay. The Court below, having recorded laches on the part of the revision petitioner/plaintiff in not deliberately pursuing the legal remedies, was justified in dismissing the subject Interlocutory Application and ultimately, prayed to dismiss the Civil Revision Petition. Learned counsel, in support of his submissions, relied on a decision of the Honourable Supreme Court in Pandit Malhari Mahale v. Monika Pandit Mahale and others².

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

"Whether I.A.No.404 of 2018 in O.S.No.112 of 2010 on the file of Principal Senior Civil Judge, Mancherial, Mancherial District, seeking to amend the plaint, can be allowed as prayed for?"

6. POINT: In Pandit Malhari Mahale's case (supra 2), the Honourable Supreme Court relied on a decision in Vidyabai and others v. Padmalatha and another³, wherein, at paragraph No.19, it is held thus:

"19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The Court's jurisdiction in a case of this nature is limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

² Civil Appeal No.189 of 2020, dated 10.01.2020

³ (2000) 2 SCC 409

7. There is no dispute with regard to filing of the subject Suit for declaration of title, perpetual injunction and to declare the Sale Deed, dated 27.03.2010, as not binding on the revision petitioner/plaintiff. Admittedly, though there is registration of subsequent Sale Deeds, dated 05.12.2011 and 11.09.2013, the revision petitioner/plaintiff is not diligent in immediately seeking amendment of the plaint for cancellation of the said Sale Deeds. However, it is the specific case of the revision petitioner/plaintiff that after the grant of *status quo* order in the subject Suit, the revision petitioner/plaintiff was dispossessed and the aforesaid Sale Deeds were brought into existence between defendant Nos.1 to 7, 18 and 19. Further, there is specific averment in the affidavit filed in support of the subject Interlocutory Application that during pendency of the subject Suit, the revision petitioner/plaintiff was dispossessed and a house was constructed in the suit schedule property. In Pandit Malhari Mahale's case (supra 2), the Honourable Supreme Court observed that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties to the litigation. In the given circumstances of the instant case, if the amendment sought by the revision petitioner/plaintiff is not allowed, the very purpose of filing the subject Suit will be defeated. It may be of no use. The substantial claim made by the revision petitioner/plaintiff is for declaration of title, recovery of possession and cancellation of the Sale Deeds, dated 05.12.2011 and 11.09.2013, so also registered Sale Deed executed between respondent Nos.1 to

7/defendant Nos.1 to 7 and respondent No.9/defendant No.9, dated 27.03.2010. Under the given circumstances, the real controversies between the parties to the dispute with regard to their title, entitlement of possession etc., in respect of the suit schedule property are required to be determined. Merely because the amendment is sought belatedly, the request made by the revision petitioner/plaintiff to amend the plaint cannot be defeated. For complete and just adjudication of the subject Suit, the amendments sought by the revision petitioner/plaintiff are necessary. This Court is also of the opinion that to render full and complete justice to the parties, the amendment proposed is necessary. The same was held in Surender Kumar Sharma's case (supra 1), relied on by the learned counsel for the revision petitioner/plaintiff. Under these circumstances, the Court below ought to have allowed the subject Interlocutory Application instead of dismissing the same on the grounds of delay and laches on the part of the revision petitioner/plaintiff.

8. Accordingly, the Civil Revision Petition is allowed and the impugned order, dated 17.07.2018, passed in I.A.No.404 of 2018 in O.S.No.112 of 2010 by the Principal Senior Civil Judge, Mancherial, Mancherial District, is set aside and I.A.No.404 of 2018 is allowed, as prayed for. No costs.

Miscellaneous Petitions, if any, pending shall stand closed.

Dr. SHAMEEM AKTHER, J

February 05, 2020.
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