

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.145 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners/plaintiffs, challenging the order, dated 11.09.2014, passed in I.A.No.144 of 2014 in O.S.No.78 of 2005, by the Junior Civil Judge, Adilabad, whereby, the petition filed by the revision petitioners/plaintiffs under Order VI Rule 17 read with Section 151 of CPC requesting to permit them to carry out amendment in paragraph 3 of the plaint and also in the prayer column by substituting 'Survey No.70/20 old corresponding to Survey No.70/20/2' with 'Survey No.72/20 old corresponding to new Survey No.72/20/2', was dismissed.

2. Heard the learned counsel for the revision petitioners/plaintiffs and perused the record. The respondents are served with notice and they entered appearance. Despite listing this matter under the caption "For Orders", there is no representation on their behalf.

3. The learned counsel for the revision petitioners/plaintiffs would contend that by oversight, a wrong survey number, i.e., 'Survey No.70/20 old corresponding to Survey No.70/20/2' was mentioned in the plaint. The said mistake is purely a typographical mistake. The correct survey number is 'Survey No.72/20 old corresponding to new Survey No.72/20/2'. The correct survey number is required to be brought on record for just adjudication of the subject matter of the suit, which is filed for perpetual injunction

against the respondents/ defendants. The amendment sought would not alter the nature of the suit. Further, the same is not hit by the provisions of the Limitation Act, 1963. The amendment sought is necessary for adjudication of the real questions in controversy between the parties to the litigation and ultimately prayed to set aside the order under challenge and allow the subject interlocutory application as prayed for.

4. The Court below, while dealing with the subject matter of the subject interlocutory application, held that P.W.1 and P.W.2 were examined. The original plaintiff, who filed the suit, is no more. The plea of amending the plaint by the legal representatives of the deceased original plaintiff is not permissible and it would cause prejudice to the respondents/defendants and ultimately declined to allow the subject interlocutory application. Admittedly, the suit was initially filed by the deceased plaintiff No.1. On her death, her legal representatives (her sons and daughters) were brought on record as plaintiff Nos.2 to 5. The documents and the material relied upon by the revision petitioners/plaintiffs reveal the survey number, which is sought to be amended. There is little confusion with regard to the survey numbers. Therefore, there is possibility of typing the wrong survey number in the plaint by inadvertence. The suit is for perpetual injunction. The real questions of controversy are required to be determined in the suit as to who is in possession of the suit schedule land etc. The revision petitioners/plaintiffs are not seeking change in the boundaries or to alter the claim or to get distinct land on record. The real controversy with regard to the suit land in question is required to

be adjudicated by the Court below. The amendment sought would not materially alter or change the suit land. Admittedly, the subject interlocutory application is filed belatedly. Merely because the subject interlocutory application is filed at a belated stage, i.e., after the death of the original plaintiff, the request of the revision petitioners/plaintiffs cannot be denied. The amendment sought is necessary for proper and effective adjudication of the subject matter of the suit. The Court below ought to have granted the relief sought by the revision petitioners/plaintiffs in the subject interlocutory application. Under these circumstances, the impugned order is liable to be set aside.

5. Accordingly, the impugned order, dated 11.09.2014, passed in I.A.No.144 of 2014 in O.S.No.78 of 2005, by the Junior Civil Judge, Adilabad, is set aside. Consequently, I.A.No.144 of 2014 stands allowed as prayed for.

6. The Civil Revision Petition is, accordingly, allowed. There shall be no order as to costs.

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

09th January, 2020
Bvv

Dr. SHAMEEM AKTHER, J