

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

—
CIVIL REVISION PETITION No.5678 of 2012

ORDER:

This revision is filed by the petitioner-plaintiff questioning the order passed by the II Additional Junior Civil Judge, Kurnool in I.A. No.435 of 2012 in O.S. No.700 of 2008 dated 03.10.2012.

The petitioner herein filed I.A. No.435 of 2012 in O.S. No.700 of 2008, seeking amendment of the plaint to the extent that they sought declaration of title in addition to the earlier prayer of permanent injunction. The Court below, by an elaborate order, rejected the petitioner's application. Aggrieved thereby, the present Civil Revision Petition.

Sri K. Sitaram, Learned Counsel for the petitioner, would draw attention of this Court to the judgment in **Abdul Rehman v. Mohd. Ruldu**^[1] wherein the Supreme Court held that the parties to the suit could bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them; the Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial; and, if such application is made after commencement of trial, the Court has to arrive at the conclusion that, inspite of due diligence, the party could not have raised the matter before such commencement.

Sri K. Sitaram, Learned Counsel for the petitioner, would submit that the respondents/defendants had relied on an unregistered agreement of sale; it was only during the pendency of the suit that the said unregistered document was impounded and, after the requisite stamp duty and registration fees were paid, it was marked in evidence; and marking of such document necessitated the petitioners seeking amendment of the plaint to the extent of seeking the additional relief of declaration of title. Learned Counsel would submit that, since the very document was

admitted in evidence subsequent to the filing of the suit, the petitioners cannot be said to have acted without due diligence.

On the other hand, Sri. J. Janakiram Reddy, Learned Counsel for the respondent, would submit that the subject matter of the suit as filed is for permanent injunction and, therefore, the Junior Civil Judge has jurisdiction to try the said suit; if the relief sought for is of declaration of title, the suit would have to be presented before the Senior Civil Judge, as the Junior Civil Judge lacks jurisdiction to try such a suit; and, in such circumstances, the Court below was justified in rejecting the petitioner's request for amendment. Learned Counsel would submit that nothing prevented the petitioner from filing a suit afresh before the Court of Senior Civil Judge.

Sri K. Sitaram, Learned Counsel for the petitioner, would submit that unless leave is granted by the Junior Civil Judge, the petitioner would be disabled from instituting a suit afresh before the Court of the Senior Civil Judge. Learned Counsel would request this Court to permit the petitioner to withdraw the suit with liberty to file a suit afresh. The jurisdiction which this Court exercises under Article 227 of the Constitution of India is supervisory, and not appellate. The petitioners have not even filed an application before the Court below seeking its permission to withdraw the suit, with liberty to file a suit afresh.

Sri K. Sitaram, Learned Counsel for the petitioner, submits that the petitioner would file an application before the Court below in this regard. I have no reason to doubt that, in case such an application is filed, the Court below shall consider the same in accordance with law at the earliest.

With the above observations, the Civil Revision Petition is disposed of. No costs.

(RAMESH RANGANATHAN, J)

28.02.2013

MRKR

[\[1\]](#) 2013(1) ALD 1 (SC)