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C.A.No. 139 OF 2002

ITEM No.109

Court No. 9

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 139 of 2002

G. KAMALA RAO Petitioner (s)

VERSUS

K. JAWAHAR REDDY & ANR. Respondent (s)

Date : 14/10/2003 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. G.S. Rao,Adv.
Mr. Raj Kumar Gupta,Adv.
Mr. Sheo Kumar Gupta,Adv.
Mr. A.N. Bardiya,Adv.

For Respondent (s)Mr. G. Ramakrishna Prasad,Adv.
Mr. Md. Wasay Khan,Adv.
Mr. D. Mahesh Babu,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties from 3.05 p.m. to 3.25 p.m.

The civil appeal is dismissed.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 139 OF 2002

G. Kamala Rao ...Appellant(s)

Versus

K. Jawahar Reddy & Anr. ...Respondent(s)

O R D E R

This appeal is filed by the plaintiff in the suit. She filed the suit seeking a decree for mandatory injunction to pull down the structures raised on the property in question and a decree for permanent injunction restraining the defendants, respondents herein, from making any further construction. Thereafter, she filed an application seeking amendment of the plaint. The trial court, by a detailed and considered order, rejected the application filed by her for amendment. Not satisfied with and aggrieved by the said order of the trial court declining to grant amendment proposed, the appellant filed a civil revision petition before the High Court. The High Court, having regard to the averments made in the plaint originally filed and also looking to the proposed amendment in the amendment application, did not find any illegality in the order passed

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by the trial court in refusing the amendment sought for and dismissed the petition. However, the High Court took care in saying that the dismissal of the revision petition would not preclude the plaintiff to file a fresh suit for the said relief.

The learned counsel for the appellant contended that the amendment sought for by the plaintiff did not change the nature of the suit and the amendment sought for was only to explain the averments already made in the plaint. He also pointed out about the alleged conduct of the respondents complaining that they disobeyed the order of injunction granted against them in making further construction. He made few more submissions touching the merits of the contentions raised in the suit.

Per contra, the learned counsel for the respondents made submissions supporting the impugned order. The learned counsel submitted that subsequent developments have taken place, in that, the writ petition filed by the appellant has been allowed and no appeal has been preferred by the defendants against the said order. The learned counsel for the appellant submitted that the appeal filed by the defendants has also been dismissed. Any way, we are not concerned with these developments in this appeal. It is for the parties to work out the remedies and it is for the appropriate court to consider the respective contentions and claims, as and when they arise.

Having regard to the nature of the amendment sought for and looking to the prayers made originally in the plaint, we are satisfied that the trial court as well as the High Court were justified in not allowing the amendment sought for by the plaintiff. When the liberty is given to

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the plaintiff to file a fresh suit covering the amendment sought for, we do not think that any prejudice will be caused to the appellant. This being the position, we decline to interfere with the impugned order. Consequently, the civil appeal is dismissed.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]

New Delhi,
October 14, 2003.