

(2004) 12 AP CK 0048
In the Andhra Pradesh High Court
Case No : CRP No. 6106 of 2004

Akula Rajaiah and Others

APPELLANT

Vs

Kannamalla Krupamma and Others

RESPONDENT

Date of Decision : 29-12-2004

Acts Referred:

Civil Procedure Code Amendment Act, 2002 — Section 16, 7
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15, Order 6 Rule 17, Order 6 Rule 18, Order 6 Rule 5

Citation : (2005) 2 ALD 41 : (2005) 2 ALT 457 : (2005) 2 RCR(Civil) 466

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Mohd. Ghulam Hussain, for the Appellant; Ramachandar Rao Vemuganti, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Respondents filed a suit seeking a decree of perpetual injunction restraining the revision petitioners and their men from interfering with their possession over the Ac.0.05 guntas of land specified in the plaint schedule (suit land), which is being contested by the revision petitioners, by filing written statement. After respondents closed their evidence and when the case is posted for cross-examination of DW. 1, revision petitioners filed a petition seeking leave of the Court to amend their written statement which was opposed by the respondents. The Trial Court, by the order under revision, dismissed the said petition for amendment of the written statement. Hence, this revision.

2. The main contention of the learned Counsel for the revision petitioners is that since one of the amendments sought is only a correction of the typographical error that crept in and since the other amendments sought are the explanations of the facts earlier pleaded by the revision petitioners, the Court below was in error in dismissing the petition without keeping in view of the fact that rules of procedure are but handmaids of justice, and contends that the Court below was

in error in assuming that the petition for amendment is not maintainable by virtue of Rule 17 of Order VI CPC, as amended by the CPC (Amendment) Act, 2002. Placing strong reliance on *Pankaja and Another Vs. Yellappa (D) by Lrs. and Others*, , he contends that delayed prayers for amendment can also be allowed by Courts. Learned Counsel for the respondents relying on *Rahimunnisa Begum and Others Vs. Mohd. Mohammadulla Khan Durrani (died) by LRs. and Others*, , contends that this revision is not maintainable. It is his contention that if the first prayer is to be allowed, it would tantamount to allowing the revision petitioners withdrawing an admission made by him which in view of the ratio in *Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.*, , is not permissible. He also relied on *Batchu Laxmepathi v. M. Prakash* 2003 (2) An.WR 123 (A.P.) : 2003 (6) ALD 118 and *Kondagani Rajeshwar Rao and Anr. v. Gandu Sammaiah* 2003 (3) ALD 97, in support of his contention that the order under revision is unassailable.

3. Since this is not a revision u/s 115 CPC, but is a petition under Article 227 of the Constitution of India, the ratio in *Rahimunnisa Begum* case (supra) does not apply to this case.

4. With reference to the contention relating to the maintainability of a petition under Rule 17 of Order VI CPC after coming into force of the CPC (Amendment) Act, 2002 on 1-7-2002, by virtue of Section 16(b) of CPC (Amendment) Act, 2002, provisions of Rules 5, 15, 17 and 18 of Order VI of Schedule I as omitted or, as the case may be, inserted or substituted by the CPC (Amendment) Act, 1999 (46 of 1999) and CPC (Amendment) Act, 2002, would not apply to the pleadings filed before the commencement of CPC (Amendment) Act, 2002 and CPC (Amendment) Act, 1999 i.e., 1-7-2002. Since the pleadings in this suit were filed long prior to 1-7-2002, Rule 17 of Order VI CPC as amended by CPC (Amendment) Act, 2002 would not apply to this case.

5. Revision petitioners sought five amendments in their written statement. The first amendment sought is to amend the word "correct" in Para 2 of the written statement as "incorrect". The other four amendments sought relate to the description of the boundaries to the plaint schedule and features near the suit land.

6. A close and careful reading of Para 2 of the written statement clearly shows that the word "correct" in line one at Page 2 obviously is a typographical error for "incorrect", more so because the next sentence begins with the words "it is also incorrect to say that the defendants". Typographical errors can be permitted to be corrected or amended at any time, as such corrections would not amount to withdrawal of an admission. Since the word "correct" in line one at Page 2 of Para 2 obviously is a typographical error for "incorrect", the Court below was in error in dismissing the first prayer of the revision petitioners.

7. With regard to the other amendments sought, I am unable to agree with the contention of the learned Counsel for the revision petitioners that those

amendments do not amount to taking up new pleas and that they are mere explanations of the pleas already taken. If a plea is already taken, it need not be elaborated by detailed explanation by seeking amendments. So revision petitioners cannot be permitted to take fresh pleas after closure of the evidence of plaintiff.

8. Therefore, the revision is partly allowed and the prayer for correction in Para 2 of the written statement is only allowed and the prayer in respect of the other amendments sought by the revision petitioners is dismissed. No costs.