

(2014) 04 AP CK 0077

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2508 of 2013

Allam Nagaraju and 3 Others

APPELLANT

Vs

Katta Jagan Mohan Reddy and 2 Others

RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 227

Citation : (2014) 3 ALD 438

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : P.S.P. Suresh Kumar, Advocate for the Appellant; Challa Srinivas Reddy and Sri. S. Laxminarayan Reddy, Advocate for the Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—This Civil Revision Petition is filed under Article 227 of the Constitution of India against the common order dated 30.04.2013 passed in I.A. Nos. 660/2012 & 788/2012 in O.S. No. 205/2011 on the file of the II Additional Senior Civil Judge, Warangal.

2. I have heard Sri P.S.P. Sureshkumar, learned counsel appearing for the petitioners and Sri Challa Srinivas Reddy & Sri S. Laxminarayan Reddy, learned counsel appearing for the respondents.

3. The revision petitioners are the plaintiffs in the suit. They filed the suit for perpetual injunction in respect of a land admeasuring Ac. 3.27 gts in Sy. No. 374/A, situated in Kadipikonda village, Hanamkonda Mandal, Warangal District. They also filed an interlocutory application in I.A. No. 229/2011 seeking temporary injunction pending disposal of the suit. The learned trial Court on the said application directed the parties to maintain status quo. The plaintiffs fully described the property in the schedule annexed to the plaint as well as to the petition specifying the extent and boundaries. The defendants filed written statement contending inter alia that the northern and southern boundaries

mentioned in the plaint schedule are incorrect and they gave the northern and southern boundaries in the written statement which according to them are correct. Soon after filing of the written statement, the plaintiffs did not seek any amendment of the boundaries but at a subsequent stage, however, before the commencement of the trial filed I.A. Nos. 660/2012 & 788/2012 seeking amendment of the northern and southern boundaries in the plaint as well as the petition schedules. The learned trial Court allowed the amendment.

4. Feeling aggrieved, the respondents filed CRP. No. 4891/2012 before this Court. Learned single Judge of this Court having felt that the contentions of the parties were not properly considered while disposing of the amendment petitions, remitted the matter to the trial Court with a direction to consider the documents filed by both the parties in detail with reference to their respective contentions and to find out whether the amendment is necessary on account of mis-description of the northern and southern boundaries in the schedule.

5. After remand, the learned trial Court passed the impugned common order dated 30.04.2013 in I.A. Nos. 660 & 788 of 2012 dismissing the said petitions. Against the said common order, the present revision petition is filed by revision petitioners/plaintiffs.

6. In the impugned order, the learned trial Court expressed the view that if the proposed amendment is allowed, it would introduce a new cause of action and cause prejudice to the defendants not only in the present suit but also in another suit filed by them in O.S. No. 50/2011 (O.S. No. 46/2012 new); further expressing the view that the plaintiffs did not take steps seeking amendment immediately after noticing the mistake, but took steps only after filing the written statement by the defendants and also after obtaining the order of status quo in the interlocutory application for injunction filed by them.

7. The learned counsel appearing for the petitioners would submit that the trial Court by taking a totally erroneous view which is contrary to the settled legal principles governing the amendments contemplated under Or. 6 Rule-17 CPC, dismissed the amendment petitions and the impugned common order being illegal is liable to be set aside in the present civil revision petition.

8. On the other hand, the learned counsel appearing for the respondents would submit that the learned trial Court rightly held that the proposed amendment would introduce new cause of action and cause prejudice to the defendants and therefore the impugned order needs no interference in this civil revision petition.

9. Admittedly, in this case, the plaintiffs gave the boundaries which are mentioned in the sale deed under which they became entitled to the suit property. It is also a fact that in the agreement which was executed prior to the sale deed, the very same boundaries were mentioned. According to the respondents, in the link documents also the very same boundaries were mentioned. The version of the petitioners is that the northern and southern boundaries mentioned in the sale deed itself are incorrect, noticing the said fact,

they obtained a registered rectification deed from their vendors getting the northern and southern boundaries corrected and thereafter filed the applications seeking amendment of the boundaries in the plaint schedule as well as in the petition schedule.

10. It is submitted by the learned counsel appearing for the respondents that the defendants can take inconsistent pleas in the written statement, but the plaintiffs normally are not supposed to take inconsistent pleas; by seeking amendment of the northern and southern boundaries to the schedule, the plaintiffs are introducing a new cause of action and such a course is not permissible in law. In support of his contentions, the learned counsel for the respondents relied on a decision in *Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.*, wherein the Supreme Court held that amendment introducing entirely different new case and seeking to displace the plaintiff completely from admissions made by defendants in written statement shall be liable to be rejected.

11. The learned counsel appearing for the respondents also relied on a decision in *Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc.*, wherein the Supreme Court expressed the view that adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action, therefore inconsistent defences can be raised in the written statement although the same may not be permissible in case of the plaint.

12. Order 6 Rule 17 of the CPC provides that the Court may at any stage of the proceedings allow either party to alter or amend pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Thus, wide power and unfettered discretion has been conferred on the Court to allow the amendment of the pleadings by either of the parties. But if the amendment is sought for after commencement of the trial, the Court may allow amendment only if it is satisfied that in spite of due diligence the party could not have raised the matter before the commencement of trial.

13. In the instant case, the amendment is sought for by the petitioners/plaintiffs before the commencement of the trial. Further, after noticing the mis-description of northern and southern boundaries, the petitioners/plaintiffs got a registered rectification deed executed through their vendors and then made applications seeking amendment of the boundaries. As otherwise, it would not be possible for them to seek amendment contrary to the boundaries mentioned in the sale deed. Therefore, some delay has been occurred in making amendment applications which is not of much consequence in the instant case.

14. As to the observations made by the learned trial Court that the amendment would introduce a new cause of action and would cause prejudice to the case of the defendants, I would like to state that mere changing the boundary

mentioned in the plaint schedule by itself does not introduce any new cause of action and it cannot be said to be a new plea taken by the petitioners/plaintiffs.

15. In this context, it would be necessary to refer to the judgments of the Apex Court relied on by the learned counsel for the petitioners/plaintiffs in Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., and Accounts Officer (A and I) APSRTC and Others Vs. K.V. Ramana and Others, .

16. In Baldev Singh and others etc. v. Manohar Singh and another etc. (supra) the Supreme Court took the view that the Courts should be extremely liberal in granting prayer for amendment unless serious injustice or irreparable loss is caused to other side.

17. The facts of the case in Usha Devi v. Rijwan Ahmad (4 supra) are identical to the facts of the present case. In the said case before the Supreme Court, the plaintiff stating that due to inadvertence, suit land was wrongly described in the schedule to the plaint and the mistake required to be corrected, made an application for amendment of the plaint. The defendant opposed the amendment on the ground that amendment sought for will render the suit non-maintainable as it would not only materially change the suit property but also change cause of action. In the circumstances, the Supreme Court held as follows:

In order to allow prayer for amendment, merit of amendment is hardly a relevant consideration, it will be open to defendants to raise their objection in regard to the amended plaint by making any corresponding amendments in their written statement.

18. In the instant case, the learned trial Court had gone into the merits of the rival contentions of the parties. It is nothing but pre-judging the issue. While dealing with the amendment applications, it is absolutely not necessary and also impermissible to go into the merits of the respective contentions. The Court is only concerned as to whether an amendment which is sought for by a party can be allowed within the parameters of Or. 6 Rule-17 CPC. Under law, it is quite permissible for a party to withdraw an admission which he previously made. Further, mentioning incorrect boundary cannot be treated as an admission of the fact by the plaintiffs. If mis-description of the property arises out of a genuine or bona fide mistake, it can be corrected even after passing of the decree also. If it is the case of the respondents/defendants that the petitioners/plaintiffs wantonly sought an amendment of northern and southern boundaries with the object of knocking away of their property, they can file additional written statement and contest the suit exposing the intention of the plaintiffs in obtaining amendment of the schedule. But at the stage of dealing with the applications seeking amendment, the Court is not expected to deeply indulge in evaluating the respective cases of the parties and the Court is not supposed to reject the amendment application with a foregone conclusion as to the merits of the case. Such a course is not permissible within the framework of Or. 6 Rule--17 CPC.

19. In the instant case, it cannot be said that if the amendment is allowed it

would introduce a new case or it would cause prejudice to the respondents/defendants. Amending the boundaries cannot be said to be introducing a new case. The view taken by the learned trial Court that the amendment would introduce a new case and it causes prejudice to the defendants is erroneous. The learned trial Court unnecessarily indulged in evaluating the merits of the contentions of the parties in the main suit and the order passed by the learned trial Court in rejecting the amendment applications filed by the petitioners/plaintiffs being not in accordance with law is liable to be set aside in this civil revision petition.

20. Consequently, the impugned order dated 30.04.2013 passed in I.A. Nos. 660/2012 & 788/2012 in O.S. No. 205/2011 by the II Additional Senior Civil Judge, Warangal is set aside and I.A. Nos. 660 & 788 of 2012 are allowed. The Civil Revision Petition therefore succeeds and the same is allowed without any order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.