

(2002) 11 AP CK 0092

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 1372 and 2460 of 2002

Ch. Narasimha Reddy, died per L.Rs. Ch. Upender Reddy and Others APPELLANT

Vs

B. Rajeshwar Rao
 B. Rajeshwar Rao Vs Ch. Narasimha Reddy and Others RESPONDENT

Date of Decision : 12-11-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2002) 11 AP CK 0092

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

Bench : Single Bench

Advocate : P. Pratap Reddy and K. Ashok Reddy, in CRP No. 1372/2002 and S. Srinivasa Reddy, in CRP No. 2460/2002, for the Appellant; P. Pratap Reddy and K. Ashok Reddy, in CRP No. 2460/2002 and S. Srinivasa Reddy in CRP No. 1372/2002, for the Respondent

Judgement

C.Y. Somayajulu, J.—Since these two revisions arise out of the order dated 11-2-2002 in I.A. No. 1210 of 2001 in O.S. No. 187 of 2001 on the file of the Court of the I Additional Senior Civil Judge, Warangal, they are being disposed of by a common order. For the sake of convenience I would refer to the parties as they are arrayed in the suit.

2. The suit is filed by the plaintiff seeking perpetual injunction restraining the defendants and their men from interfering with his possession over the plaint schedule property. During the pendency of the suit the plaintiff filed I.A. No. 1210 of 2001 under Order 6 Rule 17 C.P.C. to amend the plaint by introducing the relief of specific performance of an agreement of sale in his favour executed by the defendants. The petition is opposed on the ground that the proposed amendment, if allowed, would deprive the defendants of the valuable right of pleading the defence of limitation, and since the claim for specific performance is barred by time, the proposed amendment cannot be allowed. The learned Senior Civil Judge, after considering the rival contentions, allowed the petition for

amendment and directed the plaintiff to deposit the necessary court fee and also the balance sale consideration on or before 25-2-2002. Aggrieved by the order allowing the petition for amendment, defendants filed C.R.P. No. 1372 of 2002 and aggrieved by the order to deposit the balance sale consideration, the plaintiff filed C.R.P. No. 2460 of 2002.

3. Heard the contentions of the learned counsel for the plaintiff and the defendants.

4. The only ground on which the defendants are resisting the application for amendment is that if the amendment is allowed, they would be deprived of the valuable right of pleading bar of limitation because usually amendment relates back to the date of filing of the suit.

5. Supreme Court in Sampath Kumar Vs. Ayyakannu and Another, held that in order to avoid multiplicity of suits, amendment should normally be allowed, and in cases where amendment is opposed on the ground of limitation, in order to protect the interests of the defendant, the relief sought by the plaintiff by amendment, can be made to be effective from the date on which the application for amendment was made. In view of the said decision of the Supreme Court, amendment sought by the plaintiff can be allowed, subject to the condition that the amendment would take effect from the date on which the petition for amendment was filed into the trial Court. Defendants are at liberty to take all the pleas open to them including that of limitation in their written statement. The Court at the time of disposal of the suit would consider the question as to whether the suit stood barred by time by the date of filing of the amendment petition and give its finding whether the suit is barred by limitation or not.

6. By virtue of the proposed amendment, the valuation of the suit, as per the agreed price, would be Rs. 12,00,000/-. The jurisdiction of the Court of Senior Civil Judge, as per the Civil Courts Act, with effect from 9-12-1997 was only Rs. 5,00,000/- till it was enhanced to Rs. 10,00,000/- recently. Since the value of the suit, if amendment were to be allowed, would be Rs. 12,00,000/-, the Court of the Senior Civil Judge will not be having jurisdiction to entertain the suit. In a similar situation in M/s. PADMANABHA TALKIES, KAKINADA AND ANOTHER vs. M/s. GOWTHAMI PICTURES, VIJAYAWADA 1971(1) A.P.L.J. 375, K.Ramachandra Rao J., after referring to the case law on the subject, upheld the order passed by the District Munsif directing return of the plaint along with the petition for amendment, which if allowed, would be beyond his pecuniary jurisdiction, for presentation before the Sub-Court, Vijayawada. In this case also, if amendment were to be allowed Senior Civil Judge would not have jurisdiction to entertain the suit for specific performance. So he also has no jurisdiction to order amendment of the plaint, which he cannot try. So he ought to have returned the plaint for presentation before the District Court along with the petition for amendment of plaint, so that the learned District Judge would have passed the appropriate orders on the petition for amendment of the plaint, and was in error in allowing the petition for amendment, which took the suit out of his pecuniary jurisdiction.

7. Therefore, allowing the revisions I direct the plaint in O.S. No. 187 of 2001 along with I.A. No. 1210 of 2001 on the file of the Court of the I Additional Senior Civil Judge, Warangal, being returned for presentation before the District Court, Warangal, for appropriate orders. The learned District Judge would hear and pass appropriate orders on the petition for amendment of the plaint. It is made clear that the amendment, if allowed, would take effect only from the date on which the petition for amendment was filed, but not from the date of the plaint, and the defendants would also be at liberty to take the plea of limitation in their additional written statement to be filed if amendment were to be allowed. With the above direction, the C.R.Ps., are disposed of. No costs.