

(1996) 02 AP CK 0026

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3802 of 1994

Ch. Venkata Subrahmanya Babu @ Venkata Subrahmanya
Gupta and Another

APPELLANT

Vs

Chanshni Lakshmana Das

RESPONDENT

Date of Decision : 08-02-1996

Acts Referred:

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

Citation : (1996) 2 ALT 964 : (1996) 2 APLJ 495 : (1996) 1 APLJ 495 : (1996) 2 CivCC 186

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : V.S.R. Anjaneyulu, for the Appellant; C. Poornaiah, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The Revision petitioners are the plaintiffs in O.S.No. 686 of 1989 pending on the file of the Court of the subordinate Judge, Vijayawada. The suit is filed for perpetual injunction and damages. The plaintiffs filed LA.No. 5074 of 1994 under Order 6, Rule 17 CPC seeking amendment of the relief praying the court to permit the petitioner-plaintiffs to seek the relief of recovery of possession of the suit premises. The said application was rejected by the learned trial Judge by the order under Revision.

2. Heard the learned counsel for the Revision petitioners and the learned counsel for the respondent-defendant.

3. Learned counsel for the Revision petitioners would contend that the learned trial Judge is not justified in rejecting the application on the ground that the amendment, if allowed, would alter the very nature of the suit. The learned counsel would further submit that the reason given by the trial Judge to reject the application on the ground that the application came to be filed at a belated stage is not justified in the facts situation of the present case.

4. On the other hand Sri Poornaiah, learned senior counsel appearing for the respondent-defendant pointed out that when the suit was instituted the revision petitioners-plaintiffs were quite aware of their right to seek eviction of the tenant and with that realisation they have categorically stated in para 14 of the plaint that they have reserved their right to take necessary and appropriate proceedings in a court of law for eviction of the tenant-defendant and in that view of the matter the present application filed after the evidence of the plaintiffs was over is wholly untenable and the learned trial Judge therefore rejected the application quite rightly.

5. At the outset it should be noticed that the learned trial Judge is not right in observing that the amendment, if allowed, would alter the nature of the suit. This Court in *Adusumilli Venkateswar Rao and another Vs. Chalasani Hymavathi*, , after referring to the earlier decision of this court in *Kameswara Rao v. K. Rajyalakshmi* 1970 (1) APLJ 309 held that conversion of suit of one for injunction into one for recovery of possession of the property does not alter the nature of the suit. The learned trial Judge himself quite rightly pointed out that the relief now sought by way of amendment is also based on the same cause of action on the basis of which the suit was instituted. As regards the other reason given by the learned trial Judge to reject the application on the ground that the application was filed at a belated stage, it should be noticed that in the written statement filed by the defendant-tenant in para 8 it is contended by the defendant that if the plaintiffs were to take advantage of the alleged demolition of the suit property, the plaintiffs should have filed appropriate proceedings seeking eviction of the defendant-tenant. In the facts and circumstances of the case, it seems that this stand taken by the defendant in his written statement prompted the plaintiffs to file the application to avoid multiplicity of legal proceedings. It is settled position in law that while considering the application for amendment the courts should be liberal. As pointed out already, the amendment if allowed will not alter the nature of the suit and the evidence of the defendant has not yet commenced. Taking the totality of the circumstances of the case I think that the learned trial Judge is not justified in rejecting the application. In the result, the CRP is allowed and the order under Revision is set aside the I.A.No. 5074 of 1994 is allowed.

6. Before concluding the point urged by the learned counsel for the respondent-defendant be noted. The learned counsel for the defendant with reference to what is stated in the plaint in para 6 of the plaint would contend that if the monthly rent of the premises in question is Rs. 1000/- and less, then the civil court will not have the jurisdiction to try the suit. It is needless to state that after the present amendment, the defendant is entitled to file additional written statement and he may urge this defence and if such a defence is taken, the trial court will frame necessary issue on the question and try the same along with other issues. No costs.