

(2002) 04 AP CK 0001

In the Andhra Pradesh High Court

Case No : C.R.P. No"s. 215 and 1452 of 2002

Chandrasekhar Survey

APPELLANT

Vs

Ramesh

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

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

Citation : (2002) 3 ALT 546 : (2002) 2 APLJ 36

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : K. Sarva Bhouma Rao, for the Appellant; B. Chinnappa Reddy, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—These two Civil Revision Petitions which arise out of a common order are heard and decided together.

2. The plaintiff in O.S.No. 633 of 1986 on the file of the court of the VI Senior Civil Judge, City Civil Court, Hyderabad, filed these two Revisions aggrieved by the common order of the Court below in rejecting two interlocutory applications filed by him seeking permission to amend the plaint and to reopen the suit.

3. The facts which are not in dispute and which are relevant for the purpose of these two Revisions are as follows.

4. Pending O.S.No. 633 of 1986, the defendant filed R.C.No. 1064 of 1986 on the file of the Court of the III Additional Rent Controller, Hyderabad seeking eviction of the plaintiff from the suit schedule premises. The said petition has been allowed and in execution of the decree, the defendant obtained possession of the suit schedule premises on 7-8-1992.

5. In O.S.No. 633 of 1986 after evidence of both sides was completed and the matter was coming up for arguments, the plaintiff filed I.A.No. 464 of 2001

seeking amendment of the plaint by incorporating the relief of recovery of possession of the suit schedule premises. In the affidavit filed in support of the said petition, the plaintiff stated that since the defendant obtained possession of the suit schedule premises pending the suit, it is necessary to add the relief of recovery of possession. The said application has been contested by the defendant stating that the petition for amendment of the plaint filed nine years after his dispossession from the suit schedule premises particularly at the stage of arguments in the suit is not bona fide and that the amendment if allowed would cause prejudice to him.

6. Along with I.A.No. 464 of 2001 the plaintiff also filed I.A.No. 463 of 2001 seeking to reopen the suit for enquiry in the amendment petition. Both the said applications have been heard together and the Court below by common order dated 19-12-2001 dismissed the said applications holding that the proposed amendment sought at a belated stage results in prejudice to the respondent/defendant. Aggrieved by the said order, the plaintiff/petitioner preferred C.R.P.No. 215 of 2002 against I.A.NO. 463 of 2001 and C.R.P.No. 1452 of 2002 against I.A.No. 464 of 2001.

7. Heard the learned Counsel for the petitioner Sri K. Sarva Bhouma Rao as well as the learned Counsel for the respondent Sri Chinnappa Reddy.

8. The learned Counsel for the petitioner submits that it is well settled that amendment to the pleadings can be allowed at any stage of the proceedings and in the instant case since the amendment proposed seeking recovery of possession is only consequential in nature, the Court below ought to have allowed the same. He accordingly contends that the order under Revision is erroneous and liable to be set aside.

9. On the other hand the learned Counsel for the respondent submits that the suit was of the year 1986 and the amendment now sought after the arguments of the defendant in the suit were heard is not bona fide and it is nothing but an attempt to fill up the gaps in the case of the plaintiff. The learned Counsel vehemently contends that in the facts and circumstances of the case the Court below has rightly dismissed the application filed by the plaintiff and the impugned order is in accordance with law and does not warrant any interference.

10. The law is well settled with regard to the scope of Order 6 Rule 17 of CPC regarding the amendment of pleadings. Where the amendment does not alter the nature of the case nor substitute the cause of action in the original plaint, it is always open to the Courts to allow the amendment of pleadings at any stage of the proceedings, provided no prejudice is caused to the other side which cannot be compensated by costs. The object is to avoid multiplicity of proceedings and to do substantial justice to the parties. Mere delay cannot be a ground to disallow the amendment sought for, unless the amendment would cause other side an injury, which could not be compensated in costs.

11. In a recent decision in B.K.N. Narayana Pillai Vs. P. Pillai and Another, the

Supreme Court after reviewing the case law on the subject has been pleased to hold thus:

"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

12. In the instant case the suit as instituted originally is based on the agreement of reconveyance dated 25-3-1983. Admittedly by the date of the suit the plaintiff was in possession of the suit schedule premises. It is also an admitted fact that pending the suit the defendant obtained possession in execution of the decree obtained by him in R.C.No. 1064 of 1986. In the circumstances the plaintiff seeks to amend the plaint by inserting the following paragraphs:

"Para-5(1): That the defendant herein has obtained the possession of the suit house on 7-8-1992 by dispossessing the plaintiffs father and his family members through E.P.No. 27/1992 on the file of IIIrd Addl. Rent Controller, Hyderabad and the defendant is bound to restore back or hand over the possession of House No. 13-3-614, at Old Bridge, Hyderabad.

Relief: 1(a) "That a decree of possession in favour of plaintiff and against the defendant may please be passed directing the defendant to put the plaintiff in vacant, physical and actual possession of the suit premises being No. 13-3-614, situated at old bridge, Hyderabad."

13. As can be seen from the material on record the proposed amendment is based on the same set of facts and it cannot be said that the nature of the suit is altered nor the cause of action is substituted. It is only an insertion of a consequential relief on the basis of subsequent events. As a matter of fact the Court below has agreed that the relief of recovery of possession sought by way of amendment is only consequential in nature. Whether the plaintiff is entitled to further relief of recovery of possession or not is an issue for determination on merits, which need not be gone into at this stage.

14. So far as the contention of the respondent-defendant that the proposed amendment would cause prejudice to him is concerned, it is pertinent to note that the defendant has already obtained possession of the suit schedule premises. In the event of allowing the proposed amendment an opportunity may have to be given to the defendant for filing additional written statement and

consequently both sides may be required to lead further evidence which is likely to result in delay in disposal of the suit. However, that itself cannot be said to be causing injustice to the defendant since he is already in possession of the suit schedule premises. In the counter filed by the defendant opposing the proposed amendment of plaint, no specific averment is made explaining how it would result in prejudice to the respondent. It is true that the plaintiff is not diligent in seeking amendment soon after he was dispossessed from the suit schedule premises, but that itself cannot be taken as a ground for disallowing the proposed amendment. Even assuming that it can be termed as negligence on the part of the plaintiff in conducting his case, the amendment cannot be refused merely on that ground when the disadvantage if any caused to the other party can be compensated with costs. Merely because the amendment was sought after hearing the arguments of the Counsel for the defendant who pointed out the lacuna in the suit, it cannot be said that the plaintiff has not acted bona fide. The learned Judge is not correct in concluding that the amendment is tainted with mala fides.

15. In the facts and circumstances of the case, I am of the considered opinion that the amendment sought on the basis of subsequent events is justified and it shall be allowed to avoid multiplicity of proceedings and to meet the ends of justice. Therefore, the order under Revision cannot be sustained.

16. For the reasons stated supra, I hold that the amendment sought in I.A.No. 464 of 2001 shall be allowed. Consequently, the plaintiff petitioner is also entitled to the relief sought in I.A.No. 463 of 2001 to reopen the suit. Accordingly both the Revision Petitions are allowed. However taking into consideration the fact that the suit is of the year 1986, I deem it appropriate to direct that the suit shall be disposed of as expeditiously as possible, preferably within three months from the date of receipt of this order. In the circumstances there shall be no order as to costs.