

(1992) 09 AP CK 0027
In the Andhra Pradesh High Court
Case No : C.R.P. No. 1027 of 1992

G. Chinna Ramalingaiah and others	Vs	APPELLANT
Pedda Sunkanna Goud and another		RESPONDENT

Date of Decision : 08-09-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Limitation Act, 1963 — Article 54
Specific Relief Act, 1963 — Section 38

Citation : AIR 1993 AP 47 : (1993) 1 ALT 140

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : Mr. T. Bali Reddy, for the Appellant; Mr. A. Gopal Reddy, for the Respondent

Judgement

1. The question that falls for consideration in this revision petition is :

"Whether refusal to permit the petitioners to amend the suit one filed initially for permanent injunction to be converted into a suit for specific performance, is proper or not?"

2. Petitioners are the plaintiff who filed O.S. 31/87 on the file of the District Munsif Court, Alampur. The said suit is one for permanent injunction restraining the defendants, who are respondents in this revision petition, from interfering with their peaceful possession over the suit schedule property, which the petitioners-plaintiffs claim to have come into possession by virtue of agreements of sale entered into between the parties as per Exs. A-1 to A-4. Along with the suit, LA. No. 266/87 was filed seeking ad interim injunction. The trial Court initially granted ad interim injunction in favour of the petitioners-plaintiffs. Later on, when the respondents-defendants, who entered appearance, filed an elaborate counter inter alia denying the execution of agreements of sale, Exs. A-1 to A-4, the interim injunction was vacated after due enquiry. Aggrieved by the orders vacating the interim injunction, it is stated by the petitioners-plaintiffs

that a revision petition has been filed-in the High Court, but no orders have been passed in the revision so far.

3. The petitioners-plaintiffs having realised that they lost the advantage, which they gained initially by virtue of ad interim injunction, after the court vacating the interim injunction filed LA. No. 279/91 before the trial Court under Order VI, Rule 17 of the CPC praying for permission to amend the plaint. By virtue of the amendment, the petitioners-plaintiffs sought to convert the suit, which was one filed for permanent injunction, into one for specific performance based on the agreements of sale, Exs. A-1 to A-4. The respondents-defendants filed a detailed counter before the trial Court and opposed the petition for amendment on the ground that the suit initially filed by the petitioners-plaintiffs is one for permanent injunction and if they are permitted to convert the suit into one for specific performance, it would change the entire nature of the suit. The argument on behalf of the respondents-defendants before the trial Court was to the effect that any filing of suit for specific performance is governed by Article 54 of the Limitation Act and the petitioners-plaintiffs having realised that time has run against them have intelligently adopted this device to circumvent the provisions of the Limitation Act. To put in a nutshell, the respondents-defendants objected allowing amendment on the ground that what the petitioners-plaintiffs lost by efflux of time, sought to gain by the proposed amendment and, therefore, they are not entitled for such relief.

4. The trial Court has considered the entire gamut of the contentions of the parties in light of Article 54 of the Limitation Act and dismissed LA. No. 279/91 on 18-2-1992, which is now assailed in the present revision petition.

Sri T. Bali Reddy, learned Counsel for the petitioners-plaintiffs has strongly contended that rejection for the petition filed for amendment is not proper inasmuch as the nature of the suit is not changed if amendment is allowed. He also contended that though initially the suit is one filed for permanent injunction, which is based on Exs. A-1 to A-4, the proposed amendment is sought only for converting into that of a suit for specific performance and possession and, therefore, there is no illegality, as the very base of the suit is sale agreements, Exs. A-1 to A-4. He has further contended that insofar as the amendment of suits is concerned, the courts are to be liberal in the interest of justice and, therefore, the amendment sought by I.A. No. 279/91 should have been allowed by the trial Court. In order to substantiate his claim, he has drawn my attention, to the decisions in Adusumilli Venkateswar Rao and another Vs. Chalasani Hymavathi, ; N. Veera-bhadraiah v. N. Bhaskar 1991 (I) APLJ 54 (Short Notes); Chintaparthi Venkataramana Reddy Vs. Nallam Rajamnia and Another, and Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, .

5. The first decision cited by Sri Ball Reddy viz., Adusumilli Venkateswar Rao's case, is to the effect that an application for amendment of the plaint seeking conversion of suit into one for possession can be allowed since such conversion does not amount to alteration of nature of the suit. What is flown from the above

decision of M. Jagannadha Rao J., (as he then was) is as follows :

"The suit was originally instituted as one for permanent injunction and the plaintiff applied for temporary injunction pending suit and the same was rejected by the trial Court, as well as in appeal by the Appellate Court. Subsequently, the plaintiff came forward with an application for amendment of the plaint under Order 6, Rule 17 of the CPC for conversion of the suit into one for possession. The said application has been allowed....."

Under that context, the learned Judge held that such amendment is permissible, as the . nature of the suit is not changed.

6. The decision in N. Veerabhadraiah v. N. Bhaskar (supra) is to the effect that application for the plaintiff to amend the plaint in a Suit for permanent injunction altering the relief into one for declaration of title and possession can be allowed in view of dispossession pending the suit.

7. In the third decision viz., C. Venkataramana Reddy's case, it was held that the general principle governing Order VI, Rule 17 C.P.C. is that the power to grant amendment of the pleadings being intended to serve the ends of justice is not to be narrowly construed and should be elaborately exercised, unless the amendment sought for would change the nature of the suit.

8. The three decisions cited supra would no doubt go to show that amendments could liberally be granted, but depending upon the nature of the relief sought by amendment. These decisions would also go to show that suit for permanent injunction could be converted into that of a suit for possession, as no hardship would be caused to other side. In the instant case, the suit is admittedly one for permanent injunction, but the amendment sought is for converting the suit into one for specific performance and possession. If amendment is allowed, in my opinion, the court would be allowing the plaintiffs to gain such a relief, which, by efflux of time, they lost, thereby the respondents-defendants would be put to irreparable loss. In other words, what has been gained by the respondents-defendants, if sale agreements, Exs. A-1 to A-4, are taken to be true, which they have denied, by virtue of amendment, they would stand to lose. Therefore, the decisions cited by the learned counsel for the petitioners-plaintiffs, in my view, are of no avail.

9. In the other decision viz., P. H. Patil's case, the principle evolved is that where the plaintiff seeks to amend by setting up a fresh claim in respect of cause of action, which since the institution of the suit had become barred by limitation, the amendment must be refused. I am afraid, this decision is adverse to the interest of the petitioners-plaintiffs.

10. The period of limitation contemplated under Article 54 of the Limitation Act is as follows :

"Description of suit. Period of limitation Time from which period begins to run

54. For specific performance of a contract. Three years

The date fixed for the performance, or if, no such date is fixed, when the plaintiff has notice that performance is refused."

It is clear from this article that if any date is fixed for performance of a contract, then the period of limitation would be three years from the date so fixed. Within three years of such date, suit has to be filed. If no such date is fixed for performance, the period of limitation would start from the date when the plaintiff has notice that performance is refused.

11. Sri A. Gopal Reddy, learned counsel for the respondents-defendants has submitted that the lower Court has properly dismissed the interlocutory application holding that if amendment is allowed, it would amount to putting the petitioners-plaintiffs in an advantageous position, which advantage, by efflux of time, they had lost. Sri Gopal Reddy has further contended that in the counter-affidavit filed in LA. No. 266/87, the very execution of Exs. A-1 to A-4 has been denied in July, 1987, which is the base for the petitioners-plaintiffs to file a suit for specific performance. Even otherwise, it is also contended that latest of agreements of sale, Exs. A-1 to A-4, is of 15-3-1972 and, therefore, any suit for specific performance has to be filed within three years as contemplated under Article 54 of the Limitation Act. In the absence of any specific date fixed for performance of a contract, the plaintiffs have to seek relief for specific performance from the date when they knew about the denial of execution of Exs. A-1 to A-4. In the instant case, admittedly Ex. A-1 is dated 20-6-1968, Ex. A-2 is dated 15-3-1972, Ex. A-3 is dt. 20-6-68 and Ex. A-4 is dated 15-3-1972. The petitioners-plaintiffs filed the suit on the basis of Exs. A-1 to A-4. When the final agreement of sale is dated 15-3-1972, according to the provisions of Article 54 of the Limitation Act, the suit should have been filed before 15-3-1975. Sri Gopal Reddy further contended that even for computing the period of limitation, when there is no specific date of performance in the agreements, the date of refusal to perform would be taken into account for filing the suit for specific performance. Admittedly, in the lower Court, counter in LA. 266/87 has been filed in the month of July, 1987 denying the very execution of Exs. A-1 to A-4. That being the situation, counsel contended, the time for filing amendment application would necessarily be three years from the date of denial i.e. July, 1987. That means, the amendment application ought to have been filed at least by July, 1990. In the instant case, admittedly the petition for amendment, LA. No. 279/91, was filed in the year 1991 and, therefore, it is hit by the provisions of Article 54 of the Limitation Act. Counsel further contended that the suit initially filed is one for permanent injunction, the relief sought by way of amendment is converting the suit into one for specific performance. The petitioners-plaintiffs, who lost the substantial relief to claim specific performance by efflux of time, cannot now be permitted to be put in an advantageous position, whereby putting the respondents-defendants in a disadvantageous position. In order to strengthen his contentions, Sri Gopal Reddy has relied on the decisions in Haridas Girdhardas

and Others Vs. Varadaraja Pillai and Another, and Haridas Aildas Thadani and Others Vs. Godrej Rustom Kermani, .

12. In Girdharidas's case the principle governing Order VI, Rule 17, CPC is that amendment taking away the right accrued to a party by lapse of time, the party will be allowed to amend the pleading if no injustice is caused to the opposite party and relief claimed thereby is within the period of limitation. Interestingly, as discussed by me, the relief now sought by the petitioners-plaintiffs-in the instant case, is barred by limitation and, therefore, to my mind, the petitioners-plaintiffs are not entitled for such relief as held by the Supreme Court in the decision referred to above.

13. In Haridas Aildas Thadani's case, their Lordships prescribed certain tests to be followed in a situation where petitions are filed for amendment under Order VI, Rule 17 and Section 151, C.P.C. There, their Lordships held that courts should be extremely liberal in granting prayer of amendment of pleading unless serious injustice or irreparable loss is caused to the other side and that the test for allowing the amendment is to find whether the proposed amendment works any serious injustice to the other side. This being the test contemplated, it is to be seen in the instant case that if amendment is allowed, it works any serious injustice to the other side. To my mind, the proposed amendment, if allowed, would affect the interest of the respondents-defendants adversely and, therefore, the amendment cannot be allowed.

14. In view of the law laid down by the Supreme Court as well as this Court on this aspect insofar as allowing the amendment liberally when filed under Order VI, Rule 17, C.P.C., it is necessarily to be seen whether the other party's rights are adversely affected. In the instant case, I have no doubt in my mind, applying the ratio contemplated in various decisions cited above, if the petition is allowed, the petitioners-plaintiffs would be put to more advantageous position, which they lost by efflux of time, thereby jeopardising the interest of the respondents-defendants, who have stood to gain by efflux of time even though they have denied in the counter filed in I.A. No. 266/87 before the lower Court about the execution of Exs. A-1 to A-4.

15. In view of the above discussion, there are no merits in the revision petition warranting interference of this Court. The revision petition is accordingly dismissed. No order as to costs.

16. Petition dismissed.