
(2000) 12 AP CK 0078
In the Andhra Pradesh High Court
Case No : CRP. No. 307 of 1998

Gujjari Vittal

APPELLANT

Vs

Padala Sadanandam

RESPONDENT

Date of Decision : 29-12-2000

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 34(2)
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 8 Rule 9

Citation : (2001) 1 ALD 460 : (2001) 1 ALT 461 : (2001) 1 APLJ 81 : (2001) 2 CivCC 16

Hon'ble Judges : Satyabrata Sinha, C.J

Bench : Single Bench

Advocate : Mr. R. Subhash Reddy, for the Appellant; Mr. L. Prabhakar Reddy, for the Respondent

Judgement

1. This revision petition is directed against the order dated 24-10-1997 passed by District Munsif, Andole at Jogipet in 1A No.155 of 1997 arising out of OS No.33 of 1991 whereby and whereunder petitioner's application for amendment of plaint filed in terms of Order VI, Rule 17 CPC was dismissed. By reason of the said application the petitioner sought for the following amendment.

"(a) In the plaint below the cause title the claim mentioned as suit for perpetual injunction may be deleted and in the same place "the suit for recovery of possession of the suit house" may be added. In para No.2 of the plaint line one may be amended as that "the plaintiff is the owner and was in possession over" by deleting the para two of the first line. In para No.4 of the plaint lines 16 to 19 may be amended as "the defendant with such evil intention and with the help of unsocial elements came on the suit land on 16-8-1977 and dispossessed the plaintiff from the suit house and illegally occupied" by deleting the lines 16 to 19. The para 6 of the plaint may be deleted completely and in the same para it may be added that the suit is for recovery of possession of the suit house and for the purpose of the same the suit is valued at Rs. 15,000/- upon which the 3/4th of the value comes at Rs. 11,250/-for which the Court fee of Rs.876/- is paid u/s

34(2) of the A.P. Court Fees and Suit Valuation Act which is sufficient".

(b) In the prayer of the plaint the first para may be deleted completely and in the same place it may be mentioned as "to pass judgment and decree for recovery of suit residential house bearing G.P. No.5-30 (old), 6-13 (new) situated at Shankarampet "A" village and Mandal."

2. The learned trial Judge by reason of the impugned order inter alia held:

"As the petitioner/plaintiff has not taken proper steps at appropriate stage i.e., immediately after filing the written statement by the respondent/defendant in the year 1991 the petitioner is not entitled to file the present petition at this stage though he is asserting that he was dispossessed from the suit house on 16-8-1997 only. Tin's fact appears to be not genuine in view of the fact that the defendant has already asserted in his written statement that he is in possession of the suit house under an agreement of sale executed in the year 1989. In view of all the above facts and circumstances of the case, I am of the clear opinion that the request of the petitioner/plaintiff to permit him to amend his pleadings does not deserve any consideration and is liable to be dismissed."

3. It is a settled principle of law that an application for amendment should be considered liberally. Only because there has been some delay on the part of the petitioner herein, the same by itself would not prejudice the opposite party. In any event, the opposite party has not been able to show that he is prejudiced in any way in the event that amendment is allowed.

4. The learned Counsel appearing on behalf of the opposite party, however, has relied upon a decision of this Court in Gorantla Kondalarayudu Vs. Marvel Organics and Others, . In the said decision absolutely a new case was made out. The learned Judge held thus:

". ...Thereby, the plaintiff wanted to delete or add certain things in the plaint which should not only decide the truth but also change the nature of the pleadings to prejudice the defendants in regard to the defence already taken and the valuable admissions got by means of the pleas already existing. When the proposed amendments were really intended to remove any clerical errors by introducing or substituting new facts, there was no ground to reject the amendment. The question is not whether the amendments are intended to delay the matter. The question is whether the amendments were necessary and proper to be allowed. On the face of it, the proposed amendments were by way of explanatory notes or reply to the defence taken by the respondents regarding which the plaintiff could have approached the Court for leave to file additional pleadings under Order 8, Rule 9 CPC. They have not done so and the learned Subordinate Judge was justified in dismissing the application for amendment...."

5. No exception can be taken to the aforementioned ratio but having regard to the fact situation obtaining herein, this Court is of the opinion that the said decision is not applicable to the facts of the present case. Further more, even in

case where by reason of an amendment a new prayer is sought to be added, which would be barred by limitation, the Court is not powerless to grant amendment (See L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., L.J. Leach and Company Ltd. v. Jardine Skinner and Co.).

6. For the reasons aforementioned, this Court is of the opinion that the impugned order cannot be sustained. The revision petition is allowed. The impugned order is accordingly set aside and the application for amendment filed by the petitioner herein is allowed but the same shall be subject to payment of costs of Rs.500/-. Such costs shall be deposited before the lower Court within one month.