

(2016) 03 AP CK 0027

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5081 of 2015

J. Yadagiri Reddy and Others

APPELLANT

Vs

J. Hemalatha and Others

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

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

Citation : (2016) 164 AIC 354 : (2016) AIRCC 1895 : (2016) 3 ALT 211 :
(2016) 3 AndhLD 52 : (2016) 3 ICC 208

Hon'ble Judges : Nooty Ramamohana Rao, J.

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; Vedula Srinivas, for the Respondent

Final Decision : Disposed off

Judgement

Nooty Ramamohana Rao, J.

1. This revision is preferred by the defendant Nos. 1, 3 and 4 in the suit, who are the respondents as such in I.A. No. 1295 of 2014. The 1st respondent herein is the plaintiff, while the remaining 3 respondents are defendant Nos. 2, 5 and 6.

2. I.A. No. 1295 of 2014 is filed by the plaintiff under Order VI Rule 17 of CPC seeking amendment of the plaint. O.S. No. 1383 of 2005 is instituted seeking partition and separate possession by metes and bounds in accordance with the shares of the parties and for allotment of the share of the plaintiff to the extent of Ac.5.00 gts in Sy. No. 30 part, Sy. No. 31 part, Sy. No. 58 part and Sy. No. 59 part of Dasarlapally Village, Kandukur Mandal, Ranga Reddy District. The 2nd relief claimed therein was for cancellation of registered sale deeds bearing document Nos. 3103 of 2003 and 3104 of 2003 dated 12.12.2003. The 3rd relief is for appointment of an Advocate-commissioner to demarcate the suit schedule properties and to allot the share of the plaintiff and the defendants as per their entitlement by metes and bounds. By moving I.A. No. 1295 of 2014, the plaintiff

sought for declaration that the sale deeds bearing document Nos. 3103 of 2003 and 3104 of 2003 dated 12.12.2003 are null and void and not binding on the plaintiff instead of the relief of cancellation as prayed for originally.

3. The case of the plaintiff is that Jambula Kasi Reddy and Jambula Venkat Reddy are joint owners of land of an extent of Ac.51.16 gts situated in several survey numbers at Dasarlapally Village, Kandukur Mandal, Ranga Reddy District. They have partitioned the said property in equal measure. Thus, each got Ac.25.28 gts. Sri Jambula Kasi Reddy was having 4 sons. Sri J. Anjan Reddy, the father of the plaintiff, J. Yadagiri Reddy, the defendant No. 1, J. Surender Reddy, the defendant No. 2 and J. Ganesh Reddy, the defendant No. 3 in the suit. After the death of Jambula Kasi Reddy, all his 4 sons have succeeded to the above lands. The father of the plaintiff and the defendant Nos. 1 to 3 have executed a registered gift deed vide document No. 787 of 1992 dated 04.05.1992 in favour of the 5th defendant, their sister, in respect of land of an extent of Ac.1.34 gts in Sy. No. 30 part, to an extent of Ac.1.20 gts in Sy. No. 31 part, to an extent of Ac.1.26 gts in Sy. No. 59 part. Thus, making a total extent of Ac.5.00 gts out of the total extent of Ac.25.28 gts, which they have succeeded to upon the death of their father, Jambula Kasi Reddy. It is the case of the plaintiff that the 2 sale deeds in question have been executed on 12.12.2003 with a view to defeat the rights and interests of the plaintiff petitioner. In those set of circumstances, the plaintiff instituted suit O.S. No. 1383 of 2005 seeking partition of the joint family properties and for allotment of one share to the plaintiff and for delivery of such a share by metes and bounds to her. She also sought for cancellation of the 2 sale deeds executed on 12.12.2003. Defendant Nos. 4 and 6, in whose favour they stand, have been impleaded for that very reason to the suit. But however, she has realized that the cancellation of sale deeds is not the appropriate relief that can be sought for by the plaintiff as she is not one of the parties to the aforementioned 2 sale deeds and on the other hand, she ought to have claimed the relief of declaration that such sale deeds are null and void and not binding on the plaintiff. Hence, the I.A. No. 1295 of 2014 has been filed, seeking declaration, by way of amendment.

4. This application was resisted mainly on the ground that the trial of the present suit has already commenced and P.W.1 and P.W.2 were examined and the suit is posted for further evidence of plaintiff. At that stage, the present application is moved. Hence, it is moved at a belated stage. It was also urged that on merits that the plaintiff has no case whatsoever and the present application is only an attempt to somehow drag the proceedings instead of bringing them to a quick end.

5. Heard Sri O. Manohar Reddy, learned counsel for the petitioners and Sri Vedula Srinivas, learned counsel, on behalf of the 1st respondent plaintiff.

6. Sri O. Manohar Reddy, learned counsel for the petitioners, would urge that the amendment application has been moved after the trial was commenced in the suit and hence without demonstrating that in spite of due diligence, the plaintiff

could not raise the plea with regard to which the amendment was now sought, such an amendment application could not have been ordered at all. Learned counsel would submit that after the amendment to the CPC,, which was brought into force with effect from 01.07.2002, normally the policy of adopting a liberal approach in permitting the parties to amend the pleadings has been checked by introducing the proviso to Order VI Rule 17 CPC setting out that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In the instant case, no such finding is recorded by the Court below. On the other hand, the plaintiff has already examined P.Ws.1 and 2 and to fill up the lacuna pointed out during the cross-examination of those witnesses, the present amendment application is moved. Learned counsel has placed strong reliance upon the judgment rendered by the Supreme Court in Vidyabai and others v. Padmalatha and another , (2009) 2 SCC 409. It would be apt to note that the Supreme Court in J. Samuel and others v. Gattu Mahesh and others , (2012) 2 SCC 300 ruled as under:

"18. The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their complaints. The courts discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However, to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states that:

no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

(emphasis supplied)

19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term due diligence is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

20. A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term due diligence determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit."

7. It is appropriate to notice the predominant purpose behind the Rule 17 of Order VI is to minimize the litigation and the avoidance of multiplicity of suits. Consequently, if there is no material inconsistency between the original averments and those which are sought to be introduced by way of amendments, such amendments should be allowed.

8. The consistent policy of the Courts in this Country was not to adopt a hyper-technical approach while dealing with applications for amendment of pleadings which would result in defeating the ends of justice.

9. Thus, the paramount consideration that should be shown to an application for amendment is whether the ends of justice would be served better or not by allowing such an amendment instead of denying the same.

10. In this context, the golden rule enunciated by the Supreme Court bench in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and others* , AIR 1957 SC 363 is worth recalling:

"What happened in the present case was that there was a defect in the plaint which stood in the way of the plaintiff asking for the reliefs he asked for; that defect was removed by the amendments. The quality and quantity of the reliefs sought remained the same; whether the reliefs should be granted or not is a different matter as to which we are not called upon to express any opinion at this stage. We think that the correct principles were enunciated by Batchelor J. in his judgement in the same case, viz., *Kisandas Rupchands case* ILR (1900) Bom. 644, when he said at pp. 649-650:

All amendments ought to be allowed which satisfy the two Conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties...but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same: can the amendment be allowed without injustice to the other side, or can it not?"

11. Batchelor J. made these observations in a case where the claim was for dissolution of partnership and accounts, the plaintiffs alleging that in pursuance of a partnership agreement they had delivered Rs. 4,001 worth of cloth to the defendants. The Subordinate Judge found that the plaintiffs did deliver the cloth, but came to the conclusion that no partnership was created. At the appellate

stage, the plaintiffs abandoned the plea of partnership and prayed for leave to amend by adding a prayer for the recovery of Rs. 4,001. At that date the claim for the money was barred by limitation. It was held that the amendment was rightly allowed, as the claim was not a new claim.

12. The same principles, we hold, should apply in the present case. The amendments do not really introduce a new case, and the application filed by the appellant himself showed that he was not taken by surprise; nor did he have to meet a new claim set up for the first time after the expiry of the period of limitation.

13. It is true that the Supreme Court in *Vidyabais* case (referred to supra) has held in paragraph No. 10 that the proviso to Rule 17 of Order VI CPC is couched in a mandatory form and hence the Courts jurisdiction to allow such an application is taken away unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

14. However, I must note that I had occasion to consider a similar question in *Kasula Surender Reddy and another v. M. Ravinder Reddy and others*, 2016 (1) ALD 437 and I have noticed that a 3-Judge bench of the Supreme Court in *Sajjan Kumar v. Ram Kishan* [, (2005) 13 SCC 89] dealt with a similar question which arose for consideration, wherein also the plaintiff/appellant proceeded with the trial of the suit and did not take care to seek an amendment at any earlier stage but then in paragraph No. 5 of the judgment, it has been held as under:

"Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff appellant succeeding in the suit."

15. Unfortunately, this judgment rendered by a bench of 3-Judges in *Sajjan Kumars* case (referred supra) has not been brought to the notice of the 2-Judges bench, which decided *Vidyabais* case (referred supra). This apart, after the *Vidyabais* case was decided, the Supreme Court has exhaustively considered the question in *Revajeetu Builders and Developers v. Narayanaswamy and sons and others*, (2009) 10 SCC 84 and Justice Dalveer Bhandari speaking for the Court has brought out the principle behind allowing amendment of pleadings, based upon the principle enunciated in *Cropper v. Smith* [(1884) 29 Ch.D 700] and in *Tildersley v. Harper* [(1878) 10 Ch. D 393] and held that the object of the Court should be to decide the rights of the parties but not to punish them for the mistakes they made in the conduct of their case by deciding otherwise than in accordance with their rights. After considering the relevant principles, I came to the conclusion in *Kasula Surender Reddys* case (referred supra) that where the amendment sought for does not require any evidence to be led specifically or additionally by either of the parties, such an amendment should be allowed. In

fact, this Court speaking through Justice M.S. Ramachandra Rao in *Waheeda begum and others v. Md. Yakub and others*, 2014 (2) ALT 640 held that the conduct of the parties, if can establish that in spite of due diligence the amendment could not be brought before the commencement of the trial, the bar contained in proviso to order VI Rule 17 CPD would not get attracted.

16. In the instant case, the plaintiff has already squarely put in issue the correctness and the legality of the 2 sale deeds by specifically praying for their cancellation. However, the petitioner/plaintiff not being a party to those 2 documents could not have prayed for cancellation of any such document. On the other hand, the more appropriate course in such a fact situation was to seek for a declaration that such documents do not bind the plaintiff. That is exactly what is now sought to be done by filing the amendment application. I am, therefore, convinced that the petitioners herein are not put to any serious or irreparable injury or loss by the proposed amendment. It is not in any manner seeking to alter the line of action which was originally planned in the suit. Nor does it seek to defeat any of the rights of the parties emanating from the pleadings set up earlier. It is merely substitution of an appropriate relief instead of cancellation as was initially prayed for. In other words, substantially there is no change in the line of action initiated by the plaintiff. I am, therefore, of the opinion that the exercise of jurisdiction as was reflected in the order passed by the Court below does not call for any interference.

17. However, Sri O. Manohar Reddy, learned counsel for the petitioners, urged that the relief of declaration as sought for now is barred by limitation and hence it could not have been ordered as the suit was filed way back in the year 2005 while the amendment application was moved nearly 9 years thereafter.

18. It is apt to note that a plea relating to limitation is a mixed question of law and fact. A specific issue has got to be framed in respect thereof. So that both the parties can lead evidence considered appropriate and suitable in support of their rival contentions. That is precisely what has now been done by the Court below by allowing the petitioners herein to file additional written statement. At any rate to cut down the pendency time of the case, in this revision I can direct the Court below to frame the following issue:

"As to whether the suit for declaration that the sale deeds bearing document Nos. 3103 of 2003 and 3104 of 2003 dated 12.12.2003 are null and void and not binding on the plaintiff, is barred by limitation or not?"

19. Accordingly, such an additional issue be framed.

20. If such a question is now framed as an additional issue, both parties will be at liberty to lead appropriate evidence and that can be examined by the Court below while deciding the suit itself finally.

21. This apart, the inconvenience caused to the defendants can be compensated by way of awarding costs. Therefore, the plaintiff is directed to deposit a sum of

Rs. 3,000/- representing the costs payable to the petitioners herein for allowing the amendment sought for by her in I.A. No. 1295 of 2014 in O.S. No. 1383 of 2005. Fifteen (15) days time is granted for depositing the costs to the credit of the suit O.S. No. 1383 of 2005. These costs will be made over by the trial Court to the defendant Nos. 1, 3 and 4, the petitioners herein upon filing memo for withdrawal of the same.

22. Accordingly, the Civil Revision Petition is disposed of. No costs.

23. Consequently, miscellaneous petitions, if any pending shall also stand closed.