

(2012) 10 AP CK 0028

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3859 of 2009

Kosuru Dhanalakshmi, Thalla Rathnam and Thalla
Venkateswarlu

APPELLANT

Vs

Mungara Ram Prasad Reddy and Thota Subrahmanyam

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

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

Citation : (2013) 2 ALD 271

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M. Ravindranath Reddy, for the Appellant; P. Ganga Rami Reddy for the Respondent No. 1 and None for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy

1. The petitioners and the 2nd respondent herein filed O.S. No. 84 of 1989 in the Court of I Additional Senior Civil Judge, Nellore, for the relief of specific performance of an agreement of sale dated 19.09.1982 against the 1st respondent herein. It was pleaded that suit schedule property was agreed to be sold for a sum of Rs. 50,000/- and that initially a sum of Rs. 7,000/- was paid as advance and thereafter, balance was paid by the 1st plaintiff i.e., 2nd respondent herein. Though in the plaint, it was pleaded that the possession of the property was delivered to them, mentioning that they lost the possession of the property after filing of the suit, the petitioners filed I.A. No. 515 of 2006 for amendment of the plaint, to incorporate the prayer for recovery of possession. That was ordered on 21.07.2006. The trial of the suit commenced somewhere in the year 2009. The 2nd respondent, who figured as the 1st plaintiff, is said to have filed I.A. No. 141 of 2002 stating that he did not sign the vakalat and plaint and that he has no concern with the suit at all. It is stated that the application was ordered in the recent past and in view of that development, the petitioners filed

I.A. No. 57 of 2009 under Order 6 Rule 17 C.P.C. with a prayer to permit them to amend the prayer in the suit. The prominent amendment was in relation to the change of stand by the 2nd respondent and the attempt of the petitioners to implead Sri Kosuru Govindaiah, the husband of the 1st petitioner, who has deposed as P.W. 1. The application was opposed by the 1st respondent by raising several grounds. Through its order, dated 22.06.2009, the trial Court dismissed the I.A. Hence, this revision.

2. Heard Sri M. Ravindranath Reddy, learned counsel for the petitioners and Sri P. Ganga Rami Reddy, learned counsel for respondent No. 1. None appears for the 2nd respondent.

3. Though the suit was filed way back in the year 1989, obviously on account of lack of coherence among the original plaintiffs and for other related reasons, it did not record any progress whatever. Much before the preliminary exercise was completed, one of the plaintiffs i.e., 2nd respondent herein came forward with the plea that he did not take part in the filing of the suit at all. The trial of the suit commenced in the year 2009. At that stage, the application for amendment of the plaint was filed before the trial Court. Extensive arguments were made and reliance was placed upon several precedents. The learned Judge has also examined that objectively and took the view that the amendment is impermissible.

4. Two aspects become relevant in this regard. The first is about the timing of the filing of the application and the second is about the contents of the amendment. On account of the amendment caused to C.P.C., in the year 2002, by adding proviso to Rule 17 of Order VI, amendments to the pleadings virtually become impossible, once the trial of the suit commenced. In the instant case, that problem does not arise, since the suit was filed much before the C.P.C. was amended. Section 16(2)(b) of the Amending Act 22 of 2002 exempts the suits or proceedings filed prior to the amendment from the purview of the amended provision. That being the case, the Rule, which is to the effect that amendments can be prayed for, at any stage of the suit, becomes unqualified and it cannot be said that the application was filed at a belated stage. Added to that, the amendment was warranted on account of the change of stand by the 1st plaintiff in the suit i.e., 2nd respondent herein. The second is as to whether the contents of the proposed amendment are such that they would change the cause of action, the nature of the suit or introduce a new cause of action. In the instant case, no such eventuality has taken place. The cause of action remains the same and the amendment is only as regards the role played by the 1st plaintiff i.e., 2nd respondent herein. The question as to whether the facts pleaded by the petitioners are true, and if so, what is their effect upon the suit, is certainly a matter of appreciation of evidence and examination by the Court.

5. Therefore, the civil revision petition is allowed and the order under revision is set aside. As a result, I.A. No. 57 of 2009 shall stand allowed. Since the suit is of the year 1989, the trial Court shall take up the trial of the suit almost on day-to-

day basis and dispose of it, before the Court closes for Summer Vacation 2013. Four (4) weeks time is granted to the 1st respondent to file additional written statement, if any. The miscellaneous petition filed in this civil revision petition shall also stand disposed of. There shall be no order as to costs.