
(2012) 04 AP CK 0086
In the Andhra Pradesh High Court
Case No : C.R.P. No. 723 of 2012

Kovvuri Ramakrishna Reddy	Vs	APPELLANT
Padala Satyanarayana Reddy and Another		RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

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

Citation : (2012) 4 ALT 1

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : N. Siva Reddy, for the Appellant; P. Lakshma Reddy, for the Respondent

Judgement

Hon"ble Sri. Justice C.V. Nagarjuna Reddy

1. This Civil Revision Petition is filed against order dated 29-12-2011 in I.A.No.1086/2011 in O.S. No. 209/2006 on the file of the learned Senior Civil Judge, Ramachandrapuram. The petitioner filed the above mentioned suit for a declaration that he is the absolute owner of the plaint schedule property and he is entitled for exclusive possession thereof. He has also sought for delivery of vacant possession of the schedule property and for costs. After completion of the trial, at the stage of arguments, the petitioner filed the above mentioned I.A. under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short "the Code") for amendment of the plaint for incorporating the relief of future profits. This application was opposed by the respondents/defendants mainly on the ground that the same is belated and also that the amendment, if allowed, requires retrial of the suit. The lower Court dismissed the said application. Feeling aggrieved thereby, the petitioner filed the present Civil Revision Petition.

2. It needs to be observed that under Order VI Rule 17 of the Code, the Court is vested with the discretion to allow either party to alter or amend his pleadings for the purpose of determining the real questions in controversy between the parties. However, under the proviso thereto, the application for amendment shall

not be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. This proviso is added with a view to cut-down on the delays and not to encourage the litigants who are either not diligent or who want to indulge in vexatious litigation for prolonging the suit proceedings. However, mere delay in filing such an application cannot constitute the sole ground for rejecting the application for amendment of the plaint. The provisions of Order VI Rule 17 of the Code are procedural, which, if interpreted in a pure literal sense, may some times cause grave injustice to the parties. Whether the Court could exercise discretion for allowing the application for amendment of pleadings, or not, depends upon the facts of each case and there cannot be any straight-jacket formula in this regard. This Court in Name Estates (P) Ltd. Vs. N. Gopal Naidu and Others, , while considering the proviso to Order VI Rule 17 held that the said provision is inserted obviously to ensure that the parties will not unduly prolong the litigation and that they are diligent in pursuing the litigation.

3. In the instant case, the petitioner, in his affidavit has stated that he has changed his Counsel at the stage of arguments and that the new Counsel has pointed out that the consequential relief of mesne profits is not claimed in the suit. It is common knowledge that a party mainly depends upon the Counsel on the aspect of claiming reliefs. Except in cases where the party himself is well informed, having legal knowledge and familiar with the litigation, the litigants are guided by the advice of the lawyers. The concept of due diligence in cases of this nature, therefore, cannot be made applicable against a party if the lawyer has not properly advised him to claim appropriate relief. In such a case, the length of delay is hardly relevant. In the event the petitioner succeeds in the suit in getting his title to the suit property declared, the relief of mesne profits is purely consequential. A party cannot be denied such a relief unless the same is barred by limitation. Even though the respondents have raised the aspect of limitation in the counter-affidavit, the same can be decided by the lower Court while disposing of the suit. The lower Court failed to take into consideration the above facts which are germane and relevant in considering the application of the petitioner for amendment of the plaint. The Court below has addressed itself mainly on the concern expressed by the respondents that in the event the amendment application is allowed, the petitioner is likely to lead further evidence. Even though a firm assurance was given by the petitioner that no such evidence will be led by him, the lower Court has observed that the petitioner cannot give any such assurance on behalf of the respondents. In my opinion, if the petitioner does not lead further evidence, there may not be any need for the respondents also to adduce further evidence. At any rate, ordinarily mesne profits are ascertained at the stage of execution proceedings, during which both the parties will be permitted to adduce evidence.

4. For the above mentioned reasons, the order of the Court below is set-aside. The Civil Revision Petition is allowed. However, for the delay in filing the

application for amendment of the plaint, the petitioner shall deposit costs of Rs. 5000/- (Rupees Five thousand only), payable to the respondents, to the credit of the suit within two weeks from today. On such deposit, the petitioner shall be permitted to amend the plaint. In default, I.A.No.1086/2011 stands dismissed. As a sequel, C.R.P.M.P.No.986 of 2012 is disposed of as infructuous.