
(2003) 02 AP CK 0054
In the Andhra Pradesh High Court
Case No : CRP No. 135 of 2003

Maguluri Venkata Subba Rao

APPELLANT

Vs

Syed Khasim Saheb and Others

RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:

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

Citation : (2003) 3 ALD 134 : (2003) 3 ALT 318

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : Meherchand Nori, for the Appellant; M. Subba Rao, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—This revision petition is filed challenging the order and decree dated 22.11.2002 passed by the Court of Junior Civil Judge, Podili, Prakasam District in I.A.No. 108/2002 in O.S. No. 68/2000.

2. By the impugned order, the Court below dismissed the I.A. filed by the plaintiff under Order 6, Rule 17 CPC seeking amendment of the plaint. Aggrieved by the order of dismissal, the plaintiff filed this revision petition.

3. The parties shall be referred to as per their array in the original suit, for convenience.

4. The brief facts are that initially the plaintiff filed the suit for permanent injunction against defendants 1 and 2. His claim is that he purchased the suit schedule property from one Maguluri Venkata Subbaiah, under an agreement of sale dated 14.5.1986 and that since then he has been in possession. As the defendants are interfering with his peaceful possession and enjoyment, he filed the suit for permanent injunction.

5. The defendants filed the written statement contending that the suit schedule

property was purchased by the wife of the 1st defendant under a registered sale deed dated 6.9.1997 and that they made some constructions and accordingly they have been in possession of the land.

6. Since defendants 1 and 2 have claimed the title to the suit schedule property through the wife of the 1st defendant, the plaintiff filed I.A.No. 263/2000 under Order 1, Rule 10 CPC for impleading her and accordingly the I.A. was allowed and the wife of the 1st defendant was added as defendant No.3.

7. Further since the plaintiff claimed the title through an agreement of sale dated 14.5.1986 said to have been executed by one Maguluri Venkata Subbaiah and since he is no more, he filed I.A.No. 684/2001 for adding his legal heirs and accordingly the I.A. was allowed and they were made as defendants 4 and 5.

8. Subsequently alleging that since defendants 4 and 5 are refusing to execute the registered sale deed pursuant to the agreement of sale dated 14.5.1986, owing to some disputes that arose after their impleadment, the plaintiff filed the present I.A. under Order 6, Rule 17 CPC seeking the amendment.

1. Decree for specific performance of sale against defendants 4 and 5;

2. Recovery of possession from the defendants 4 and 5 or from defendants 1 to 5, after demolishing the structures unlawfully constructed therein by the 3rd defendant; and

3. Permanent injunction restraining the defendants and their men from interfering with his peaceful possession and enjoyment of the suit schedule property.

9. The Court below by the impugned order, held that the present amount sought, would change the nature of the suit and cause great injustice to the defendants 1 to 3. It is observed that for a decree for specific performance against defendants 4 and 5, the plaintiff is always at liberty to file a separate suit. Accordingly the Court below rejected the amendment. Hence, the present revision.

10. The learned Counsel for the revision petitioner-plaintiff contended that basing on the facts and circumstances existing as on the date of filing of the suit, the plaintiff sought for permanent injunction against defendants 1 and 2. He further reiterating the above facts, contended that in order to avoid multiplicity of litigation, the amendment to the plaint is very much necessary. With these contentions, he sought for allowing of the amendment and setting aside of the impugned order.

11. On the other hand, the learned Counsel appearing for the respondents - defendants contended that in view of the amendment, the very nature of the suit had been changed and if it is allowed, great prejudice will be caused to the defendants and, therefore, the Court below had rightly rejected the amendment. With these contentions, he sought for dismissal of the revision.

12. In order to appreciate the above contentions, it is necessary to look into the

facts. The plaintiff initially filed suit for permanent injunction against defendants 1 and 2. In the written statement filed by the defendants, they introduced totally a new theory stating that they have a valid title by virtue of a registered sale deed dated 6.9.1977 executed by one Thirumalasetty Narsaiah in favour of the wife of the 1st defendant. This averment in the written statement has necessitated the plaintiff to add the defendant No. 3. Subsequently he filed another application to add defendants 4 and 5, who are the legal heirs of late Maguluri Venkata Subbaiah, who executed agreement of sale in the year 1986 and who is also closely related to the plaintiff, in order to establish his possessory right. It is alleged that even though the plaintiff paid the entire sale consideration, he did not go for regular sale deed.

13. It is stated in the affidavit filed in support of the present I.A. that defendants 4 and 5 were originally inclined to execute the sale deed for sometime, presumably even after their impleadment. It is to be noted that they were impleaded in the year 2001 and after sometime, since they retreated from executing the regular sale deed in favour of the plaintiff, it necessitated the plaintiff to file the present amendment seeking other reliefs like decree for specific performance against defendants 4 and 5 and for recovery of vacant possession from defendants 1 to 3, in which allegedly they have made some construction by way of interference, which was the original cause of action for filing the suit for permanent injunction.

14. The general principle is that in a suit for injunction, there need not be any separate prayer for declaration of title. It is an established principle that in a suit for injunction, issue of title can be decided incidentally.

15. At this stage, the question would be whether the "injunction" is primary or "title" is primary.

16. In a matter like this, where the suit was originally filed for injunction, and subsequently by virtue of the denial of very title of the plaintiff by defendants 1 to 3 and also by virtue of going back by defendants 4 and 5 in executing a registered sale deed, the plaintiff is left with no option except to seek the amendment of the plaint suitably.

17. It is not as though, the plaintiff had resorted to the amendment of the plaint for the reasons only known to him or the reasons totally attributable to himself.

18. As already pointed out, defendant No.3 was initially impleaded as a party in view of the specific denial of the title of the plaintiff by defendants 1 and 2. Further the legal heirs of Venkata Subbaiah i.e., defendants 4 and 5 were impleaded by the plaintiff in his own interest, to establish his right of possession, on the basis of an agreement of sale said to have been executed by Venkata Subbaiah. It is further to be remembered that defendants 4 and 5 were impleaded in the year 2001 by filing an independent I.A. It is alleged that initially they were co-operating with the plaintiff, but when they went back from their alleged promise, the present amendment was necessitated. Therefore, it is

imperative for the plaintiff to seek the relief of specific performance. Further, having allowed the plaintiff to implead the defendants 4 and 5, in my considered view, if the present amendment is rejected, the purpose of their impleadment will be totally defeated. It is on record that both the I.As filed for impleadment, were allowed since uncountered.

19. From the above, the position is that the plaintiff has to protect his interest from two parties. Firstly from the defendants 1 to 3 who are tracing the title from a regular sale deed and secondly from the defendants 4 and 5, who are repudiating to execute a regular sale deed pursuant to the agreement of sale executed by their deceased legal predecessor for a valid consideration. In other words, the plaintiff is confronted with two problems i.e., firstly, in a way, he has to defend the rights of defendants 4 and 5 to prove their title and if he is successful, then secondly, he has to seek for decree for specific performance against them, in total elimination of defendants 1 to 3.

20. For the above process, the plaintiff in normal course has to file a suit for declaration of title and consequential injunction as against defendants 1 to 3, if he has prior knowledge of their alleged rights and further he has to file another suit for specific performance against defendants 4 and 5. If the controversy as regards the specific performance was not there, filing of the suit for mere injunction against defendants 1 to 3 would have been sufficient, wherein the question of title would have fallen for consideration as an incidental issue. Further the established principle is that in a suit for bare injunction, the question of title can also be decided either as an incidental issue or substantial issue depending upon the facts and circumstances of the case. As per the decisions of the Apex Court in *Gram Panchayat, Naulakha v. Ujagar Singh* AIR 2000 SCW 3659, and *Sajjadanashin Sayed Md. B.E.Edr. (D) By Lrs. Vs. Musa Dadabhai Ummer and Others*, , in case, the issue of title becomes primary or substantial, and is decided accordingly, no further right to file a suit for declaration of title would arise as it will be barred by *res judicata* and in case if the issue of title is decided incidentally or collaterally, giving primacy to possession for granting injunction, then that will not debar parties for filing a separate suit for declaration of title and recovery of possession.

21. In the instant case as already noticed, there is denial of title by defendants 1 to 3 on the one hand and there is denial of execution of regular sale deed by defendants 4 and 5 in favour of the plaintiff, on the other hand. If two separate suits were to be filed, certain issues and the evidence would be overlapping. Sometime, if two suits are directed to be filed, if any suit is decided against the plaintiff and in favour of the defendants 1 to 3, still the dispute between the defendants 1 to 3 on the one hand and the defendants 4 and 5 on the other, as regards their title inter se would remain unsettled. Even if the plaintiff succeeds against defendants 1 to 3, still the grievance of the plaintiff for specific performance of the agreement of sale against defendants 4 and 5, would remain unresolved. Therefore, in my considered view, the controversy on record, is

peculiarly triangular. In other words, as explained above, each party has to fight with other two parties on league basis. Therefore, in order to lessen the litigation and to prevent the parties from running pillar to post, it is necessary to settle the issues once for all, in one suit.

22. In such case, though amendment cannot be claimed as a matter of right, has stated above and in the light of the prevalent peculiar facts and circumstances, it is always desirable to have a common trial by framing all the necessary issues in one suit, in order to avoid proliferation and prolixity of litigation.

23. My view is strengthened by the judgment of the Apex Court in Raghu Thilak D.John v. S.Rayappan (2001) 2 SCC 472, wherein Their Lordships held that the dominant purpose of Order 6, Rule 7 of C.P.C. is to minimize litigation. While coming to the above conclusion, Their Lordships referred to the observations in the earlier judgment of the Apex Court in B.K.N. Narayana Pillai Vs. P. Pillai and Another, , which are re-extracted as under:

"3. The purpose and object of Order 6, Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayer should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation".

24. Their Lordships in Ragu Thilak's case (supra) further indicated that the amendment sought would change the nature of the suit, shall not be a reason to refuse the application for amendment. Their Lordships further went to the extent of stating that dispute as regards the limitation could also be made subject-matter of the suit, after allowing the amendment prayed for.

25. Further the Hon"ble Supreme Court in the decisions reported in Sampath Kumar Vs. Ayyakannu and Another, had indicated in categorical terms that the Courts should be liberal while dealing with the petitions filed under Order 6, Rule 17 CPC in pre-trial cases. In the present case, the trial has not yet commenced and only the written statements are filed and contentions in the written statement are the source for the present interlocutory litigation at the instance of the plaintiff.

26. The facts in Sampath Rumor's case (supra) would disclose that the appellant therein initially filed a suit for permanent prohibitory injunction claiming his possession over the suit property, which is an agricultural land. Subsequently after the commencement of the trial, the plaintiff moved an application under

Order 6, Rule 17 CPC for amendment in the plaint, alleging that during pendency of the suit, the defendant forcibly dispossessed him. On such averment, the plaintiff sought for relief of declaration of title to the suit property and consequential relief of delivery of possession. However, the defendant therein denied the amendment on various grounds, including that of limitation etc. The Trial Court as well as the High Court dismissed the amendment on the ground that the plaintiff therein could file a separate suit. The Apex Court found fault with the view taken by the Courts below and held at paragraph No.7 as under: --

In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial Court, it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court" in refusing the prayer for amendment and also in dismissing the plaintiffs revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

27. At paragraph No.9, of the said judgment, the Apex Court further observed as under:--

Order 6, Rule 17 CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made.. ...Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion. thereof. In former, case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter case the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straightjacket formula can be laid down.

28. In view of the foregoing reasons and following the judgments of the Apex Court, in order to have a comprehensive trial and to put a quietus to al the issues and also to avoid further litigation, it is desirable to have all the issues decided in one suit by framing appropriate issues.

29. In the result, the impugned order is set aside and the revision petition is allowed. No costs.