
(2011) 07 AP CK 0063
In the Andhra Pradesh High Court
Case No : CRP No. 1626 of 2011

Name Estates (P) Ltd.

APPELLANT

Vs

N. Gopal Naidu and Others

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

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

Citation : (2011) 5 ALD 445 : (2011) 4 CivCC 773

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

Bench : Single Bench

Advocate : G. Ramakrishna, for the Appellant; Gaddam Srinivas, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—This civil revision petition arises out of order dated 18.1.2011 in IA No. 71/2010 in OS No. 9/2004 on the file of Senior Civil Judge, Bhongir, Nalgonda District.

2. The Petitioner-company is the Plaintiff in the suit filed for perpetual injunction against Respondent No.I. It is its case that Respondent No.I was its Director at one point of time, that in his capacity as the Director, he obtained General Powers of Attorney in his favour from various land owners on its behalf, that as he started misusing the said General Powers of Attorney, the Petitioner was constrained to file the suit for perpetual injunction. When an ad interim injunction was granted in its favour, the same was questioned in CMA No. 543/2005 and this Court in CMA MP No. 1228/2005, on 13.9.2005, while granting suspension of the interim injunction, inter alia, made the following observations:

Prima facie, no declaratory decree is sought against the Petitioner in the main suit declaring that he ceased to be a Director of the company except seeking injunction restraining him from the sale of the company properties.

More than five years after the said observations were made, the Petitioner filed IA No. 71/2010 seeking permission to amend the plaint by adding the prayer for declaration that the General Powers of Attorney executed in favour of Respondent No. 1 by various owners of the lands while he was working as the Director of the Petitioner-company are for and on its behalf and for its benefit and for some other reliefs. Respondent No.1 has resisted the said application mainly on the ground that the Petitioner failed to plead and prove that despite due diligence, he could not file the application for amendment before commencement of the trial. The Court below after considering the rival pleas, dismissed the application for amendment on the ground that the same does not satisfy the requirements of proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short "the Code").

3. At the hearing, the learned Counsel for the Petitioner made a strong bid to convince this Court that the order under revision suffers from an error of jurisdiction and consequently to set-aside the same. The learned Counsel submitted that even though there is delay in filing the application for amendment, the same cannot be the ground to reject the Petitioner's application, as such rejection leads to multiplicity of proceedings. In support of his submissions, the learned Counsel placed reliance on the judgments of the Supreme Court in *Pankaja and Another Vs. Yellappa (D) by Lrs. and Others*, and *M. Satyanarayana Vs. Bhimavaram Municipal Council and Another*,

4. Opposing the above contentions, the learned Counsel for Respondent No.1 submitted that the Petitioner failed to plead and prove that despite exercise of due diligence, he could not seek the amendment prior to commencement of the trial. He placed reliance on the judgment of the Supreme Court in *Ajendraprasadji N. Pandey v. Swami Keshavprakeshdasji N.* 2007 (2) ALD 93 (SC) : (2006) 12 SCC 1.

5. I have carefully considered the submissions of the learned Counsel for the parties. Order VI Rule 17 of the Code permits amendment of pleadings by the Court at any stage of the proceedings. However, the proviso to the said provision prohibits such application being allowed after the commencement of trial, 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. This proviso is inserted obviously to ensure that the parties will not unduly prolong the litigation and they are diligent in pursuing the litigation. Therefore, an application for amendment of pleadings filed after commencement of the trial needs to be considered keeping in view the above salutary purpose for which the proviso is inserted.

6. A perusal of the affidavit filed by the Petitioner in support of the application shows that, it has not even made an attempt to plead due diligence. As noted above, more than five years prior to filing of the application by the Petitioner for amendment, this Court has observed that the Petitioner has not sought for a declaratory decree. Therefore, the said observation ought to have worked as a

caution for the Petitioner to be diligent enough in filing appropriate application for amendment within a reasonable time thereafter. The Petitioner allowed as many as five years to pass by, the trial to be commenced and suddenly woke up and filed the present application for amendment. The Court below very rightly rejected the application on the ground that the same is wholly belated and that the Petitioner failed to plead and prove due diligence as envisaged under the proviso to Order VI Rule 17 of the Code. In Ajendraprasadji N. Pandey's case (supra), cited by the learned Counsel for Respondent No.1, in more or less a similar situation, the Supreme Court observed that neither the facts pleaded nor the grounds raised by the party therein in support of the amendment application even remotely contained the plea that despite exercise of due diligence, the amendment application could not be filed earlier. On that ground, the Supreme Court has confirmed the order of the High Court in rejecting the amendment application. This judgment squarely applies to the facts of the present case. The two judgments, namely, Pankaja's case (supra) and State of A.P. 's case (supra) relied upon by the learned Counsel for the Petitioner do not help the Petitioner's cause because they turned on their own facts.

7. For the above mentioned reasons, the civil revision petition fails and the same is accordingly dismissed.

8. As a sequel, CRP MP No. 2310 of 2011 is dismissed as infructuous.