

(2006) 10 AP CK 0056
In the Andhra Pradesh High Court
Case No : CRP No. 3958 of 2006

P. Jagdishwar

APPELLANT

Vs

P. Laxmi Bai and Others

RESPONDENT

Date of Decision : 26-10-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 6 Rule 17

Citation : (2007) 1 ALD 41

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Mohammed Imran Khan, for the Appellant; P.V. Sanjay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The plaintiff in O.S. No. 7 of 2005 in the Court of I Additional Chief Judge, City Civil Court, Secunderabad, filed this civil revision petition, feeling aggrieved by the order, dated 4.8.2006, passed by the trial Court in IA. No. 130 of 2006, permitting amendment to the written statement, filed by the first respondent herein.

2. Petitioner and Respondent Nos. 2 to 7 are the children of the first respondent and late P. Veeresham. During his life time, Veeresham was allotted a house plot at Prakash Nagar in his capacity, as an employee of Indian Air Lines. He died in February 1987, while in service. The petitioner filed the suit for partition of house bearing No. 1-8-450/B-46, Indian Airlines Employees Housing Colony, Secunderabad. The suit was initially filed against the mother and brothers of the petitioners, Respondent Nos. 1 to 3 herein. Subsequently, his sisters, Respondent Nos.4 to 7 were impleaded. He pleaded that the suit schedule property was acquired by his father and his Class-I heirs are entitled to equal shares. It was alleged that the first respondent was trying to alienate it. The petitioner has also filed LA. No. 285 of 2005 under Order 39 Rules 1 and 2 CPC for temporary injunction.

3. The first respondent filed written statement in the suit, and counter-affidavit in the IA. She admitted that the property was acquired by her husband and that it is liable to be divided into eight equal shares. According to her, the petitioner was entitled to 1/8th share and not 1/3rd as pleaded by him. She also referred to the last wish of her husband that the sale proceeds of the property must be divided among the members of the family, comprising of herself, and children. She made a reference to an agreement of sale, in respect of the said property, entered into in February 2005 and alleged that a sum of Rs. 6,00,000/- was received as advance. She expressed her readiness to pay 1/8th of the consideration of the building, being Rs. 5,80,450/-, to the petitioner and in fact, enclosed a bankers cheque for that amount, along with the written statement and counter-affidavit.

4. Respondent Nos. 1 to 3 herein filed LA. No. 130 of 2006 under Order 6 Rule 17 CPC, with a prayer to permit them to amend the written statement filed by the first respondent. In the affidavit filed by the first respondent, in support of the LA., it was stated that on account of her old age and disturbances in the family, she could not verify the facts properly and believing the documents supplied by the petitioner as true, she proceeded on the assumption that the plot was allotted to her husband. She contented that on verification of the record, it emerged that the initial allotment of the plot, made in favour of her husband was cancelled and thereafter, independent allotment was made to her, after the death of her husband, and that the sale deed was also executed in her favour. With these and other related submissions, she wanted to amend the written statement, which is to result in withdrawal of certain admissions and proposals, and substitution of new pleas in their place.

5. The petitioner filed a counter-affidavit opposing the LA. He stated that the first respondent categorically admitted that the suit schedule property was acquired by late Veeresham and it is not permissible for the first respondent to resile from that stand. Through the order under revision, the trial Court allowed the LA.

6. Sri Mohd. Imran Khan, the learned Counsel for the petitioner submits that the first respondent has not only categorically admitted that the property was acquired by her husband, but also stated that it was her husband's wish that the property must be divided equally among the children and their mother, and the present application is filed only with a view to deprive the petitioner, of his legitimate share in the property. Learned Counsel submits that though it is permissible for a defendant in a suit, to take contradictory stands, an admission once made in a written statement, cannot be permitted to be withdrawn. He made extensive reference, to the table, which depicted the impact of the amendment, permitted by the trial Court.

7. Sri P.V. Sanjay Kumar, the learned Counsel for the respondents, on the other hand, submits that the written statement and the counter-affidavit were filed, believing the documents furnished by the petitioner as true and that being an old woman of 75 years, the first respondent could not verify the facts properly,

particularly in view of the fact that the IA for temporary injunction was coming up for hearing. Learned Counsel submits that the question as to whether a particular item of property belongs to the coparcenery, or belongs exclusively, to one of the members, must be decided through verification of necessary facts; and admission or denial by any party would not be of much consequence. He submits that the amendment does not affect the rights of the petitioner and he can certainly prove his contention, during the course of trial.

8. The dispute in the suit relates to the partition of a residential house. Late Veeresham and the first respondent herein had three sons and four daughters. On the death of Veeresham in the year 1987, the second respondent was employed by the organization, on compassionate grounds. The petitioner filed the suit for partition claiming that the second respondent is not entitled to any share, as he was already provided employment and thereby, the property has to be divided into three parts and shared by himself, his mother and the other brother, third respondent herein. Along with the suit, the petitioner filed a copy of the letter of allotment.

9. The first respondent filed written statement and counter-affidavit, admitting that the property was acquired by her husband and that it was his last wish, that the sale proceeds be distributed equally among his wife i.e., herself and their children. She made a reference to an agreement of sale and the factum of receipt of Rs. 6,00,000/- as advance. At that stage, four sisters were also impleaded. The first respondent expressed her willingness to pay 1/8th of the sale consideration to the petitioner and in fact, enclosed a bankers cheque for Rs. 5,80,450/-

10. The petitioner filed I.A. under Order 39 Rules 1 and 2 CPC with a prayer to restrain the defendants therein from alienating the property. The trial Court disposed of the same on 12.8.2005, by directing that the petitioner shall have the option to purchase the property and fixed the time schedule for payment of the consideration. The consideration mentioned in the agreement of sale was taken as the basis. The discussion undertaken in the order in the IA and the directions given therein would disclose that virtually nothing is left to be decided in the suit. Another important development is that the holder of the agreement of sale filed OS No. 82 of 2005 in the same Court, for the relief of specific performance. The same learned Judge, who passed the orders in LA. No. 285 of 2005 in OS No. 7 of 2005, had decreed OS No. 82 of 2005 on 26.9.2005. Therefore, a clear contradiction and conflict was brought about. That, however, is a different aspect.

11. Respondent Nos. 1 to 3 herein filed IA No. 130 of 2006 before the trial Court, seeking permission to amend the written statement filed by the first respondent. The gist of the same has already been pointed out. Viewed in isolation, the request of the first respondent cannot be acceded to, since she wanted to resile from the admission made by her in the written statement.

12. In *Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another*, , while discussing the various aspects of the amendment of pleadings, the Supreme Court held that an important admission made by a party cannot be permitted to be withdrawn. In *Heeralal Vs. Kalyan Mal and Others*, , the Supreme Court held that an admission in a written statement, which otherwise would have entailed in a preliminary decree, cannot be permitted to be amended to the detriment of the plaintiff. In *Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.*, , the Supreme Court held that a different and new case, which would have the effect of displacing an admission made by the defendant in the written statement, is impermissible.

13. One significant aspect, which needs to be taken into account, in the instant case, is that the first respondent is an old woman of 75 years and she is burdened with the maintenance of the family facing the hostility and non-co-operation of the petitioner. Just before the suit was filed, she was hospitalized. An agreement of sale was entered into for selling the suit schedule property, with a view to distribute the sale proceeds among her children. At that stage, the suit was filed along with an IA. A list of allottees of plots was enclosed by the petitioner, to the plaint filed by him. The first respondent filed a copy of the list of allottees said to have been received by her along with the plaint. The first name is shown as Sri J.K. Naidu. Against the name P. Veeresham, at Item No. 6, a mark of ditto (") is shown, thereby indicating that it is Sri P. Veeresham. The first respondent pleaded that she verified the concerned record thereafter and found that the allotment was made in her favour as Mrs. P. Veeresham and in fact, the sale deed was also executed in her favour. It is on this basis that she wanted to amend her written statement, to incorporate the plea that she is the allottee and purchaser of the plot and that it is her exclusive property.

14. With a view to ascertain the facts, this Court called for the record. In the original list of allotment filed along with the plaint, the name of allottee at Item No. 6 is shown as Mrs. P. Veeresham. Coupled with this, the sale deed for the plot is also in the name of the first respondent. Under these circumstances, it cannot be said that the first respondent tried to withdraw her admission, as a second thought.

15. Whatever may be the effect of admission, in relation to the transactions or relations between the parties to a suit, those touching upon the entitlement to properties, be it on the basis of succession, purchase, or intestate succession cannot close the avenues, for the parties, to fall back on the record. When a circumstance is governed by operation of law, or documents as required in law, the admissions or denials of the parties, would not be of much significance. The rights of the parties, in this regard, need to be decided, on the basis of the oral and documentary evidence and by application of principles of law. Procedure, being a tool to supplement the adjudication of the disputes effectively, cannot be permitted to defeat the rights of the parties. Therefore, the principle laid down by the Supreme Court, in the precedent, referred to above, cannot be applied to

the facts of this case.

16. Even after the amendment, the petitioner can put forward his contention, as to the nature of the property and its availability for partition. The inconvenience suffered by the petitioner can be compensated by awarding adequate costs.

17. For the foregoing reasons, the civil revision petition is dismissed. It is directed that the respondents shall pay a sum of Rs. 5,000/- (Rupees Five Thousand Only) towards costs to the petitioner, as a condition for allowing amendment. The first respondent is a senior citizen and the suit is ripe for trial in all respects. The trial Court shall endeavour to dispose of the same by the end of April 2007. There shall be no order as to costs in this civil revision petition.