
(2015) 09 AP CK 0049
In the Andhra Pradesh High Court
Case No : CRP No. 3312 of 2015

Poshetty Lurdamma and Others

APPELLANT

Vs

Kunday Mallaiah and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

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

Citation : (2015) 6 ALD 452 : (2016) 1 ALT 232

Hon'ble Judges : Challa Kodanda Ram, J.

Bench : Single Bench

Advocate : M.V. Praveen Kumar, for the Appellant

Final Decision : Dismissed

Judgement

Challa Kodanda Ram, J.—This civil revision petition is filed by the petitioners/plaintiffs questioning the order dated 28.11.2014, passed by the Senior Civil Judge, Bhongir, in IA No. 990 of 2013 in OS No. 63 of 2007, wherein and whereby the application filed by the petitioners/plaintiffs under Order VI Rule 17 C.P.C., with a prayer to allow them to amend the plaint, was dismissed. The brief facts of the case are that the petitioners/plaintiffs had filed a suit in OS No. 63 of 2007 on the file of the Court of Senior Civil Judge, Bhongir, for declaration of title and perpetual injunction in respect of the suit schedule property. While things stood thus, when the suit was coming up for the evidence of the respondents/defendants, the petitioners/plaintiffs filed the impugned I.A., seeking to amend the plaint with respect to properties covered in Sy. Nos. 110, 111, 120 and 121 situated at Bahadurpeta Village, Alair Mandal, Nalgonda District. Originally the suit was filed in the year 2007 with respect to property in the same survey numbers over an extent of Acs. 13.15 cents with different boundaries. In addition, an extent of Acs. 8.20 cents with certain boundaries were sought to be added as "B" schedule to the suit with further prayer for recovery of possession over an extent of Acs. 8.20 cents in the same survey numbers.

2. The plea set up by the petitioners/plaintiffs is that on 23.10.2013, the

respondents/defendants forcefully occupied the "B" schedule land which is proposed to be brought into the suit by way of amendment and thus the cause of action has arisen on 23.10.2013 to seek amendment. It is further averred that the assertion of the defendants that they came to be in possession of the property by virtue of the delivery effected in their favour by the Revenue Officials was made for the first time in the written statement and the said averment is false. Further, the defendants created the documents to support their case. It is only when the case is posted for the defendants' evidence, the defendants illegally occupied the land over an extent of Acs. 8.20 cents of the suit schedule property and the occupation was made on 23.10.2013. Hence, the suit for recovery of illegally occupied extent of the land out of the suit schedule land and the subsequent amendment petition.

3. Counter-affidavit was filed by the respondents/defendants opposing the impugned I.A. and it was categorically stated therein that the extent of Acs. 8.20 cents of the suit land was delivered as far back as on 20.4.2007 pursuant to the order dated 18.4.2007 of the Tahsildar, Alair Mandal, vide his Proceedings C/137/2007. Thus, the allegations made in the impugned I.A., are false and at any rate the trial of the suit had commenced and the evidence on behalf of the plaintiffs was closed after examining three witnesses on their behalf and the suit is posted for the evidence of the defendants. In fact, the defendants had also filed the chief affidavit of one Kulla Roshaiyah, who is the 4th defendant. At this belated stage, the impugned I.A., has been filed and after hearing both sides, the Court below had dismissed the impugned LA on 28.11.2014.

4. Heard the learned Counsel for the petitioners and perused the material placed on record.

5. Learned Counsel for the petitioners/plaintiffs strenuously contends that if the amendment is not allowed, the plaintiffs would suffer irreparable loss and hardship. He further submits that the Hon'ble Supreme Court in the case of Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., , had held that amendment of pleadings should be liberally granted, unless serious injuries or irreparable loss is likely to be caused to the other side.

6. The details of amendments which are sought by the petitioners need not be set out here. The reasons for seeking amendment of the plaint as alleged is forceful occupation of the defendants on 23.10.2013 whereas in the very written statement filed at the earliest point of time in the year 2007 itself, the defendants had claimed that the schedule property was delivered to them by virtue of the orders passed by the Tahsildar, Alair Mandal, Nalgonda District. Apart from that in earlier proceedings, the factum of the petitioners filing objections before the Tahsildar in revenue proceedings has been taken note of. In other words, the plea of the petitioners that it is only in 2013 they were dispossessed is an invention made for the first time. The relief which the petitioners are seeking through the amendment of the plaint is recovery of possession whereas in the original suit they prayed for declaration of title and

perpetual injunction. Even by the date of their filing the suit, the possession was alleged to have been delivered by the Revenue Officials through a Panchanama dated 20.4.2007 and significantly after considering the objections raised by the plaintiffs with regard to the delivery of the possession. In other words, the application for amendment of the plaint is made at the belated stage. In this context, the amended provision, Order VI Rule 17 C.P.C., may be noticed.

"17. Amendment of Pleadings.--the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, 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. Heard the learned Counsel for the parties and perused the material placed on record."

7. Considering this provision, the Hon"ble Supreme Court in the case of J. Samuel and others v. Gattu Mahesh and others, (2012) 1 SCR 295, had categorically held that the amendment of the plaint shall not normally be allowed once the trial of the case commences except in exceptional circumstances.

8. In the present case, the Court below, as a matter of fact, found that denial of the possession of the petitioners/plaintiffs was as far as back as in the year 2007 and there was no due diligence on the part of the petitioners/plaintiffs in seeking amendment of the plaint. Thus, the application made by the petitioners/plaintiffs after completion of the process and adducing of evidence on their part and at the stage of defendants" evidence is not bona fide and belated one. In that view of the matter, the impugned order does not call for any interference as there is no error either of the jurisdiction or there is any gross injustice done.

9. The judgment referred to by the learned Counsel for the petitioners/plaintiffs does not support the case of the petitioners as in that case the amendment was ordered as the trial Court had recorded a finding that the parties were yet to file their documents and the trial of the case had not commenced. The Court also took note of the fact that the amendment sought is to the written statements and who has a right to take alternative pleas thereby making a fine distinction between cases where amendment sought to the plaint being different from amendments sought to the written statements. Accordingly, the civil revision petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this revision, shall stand closed.