
(2009) 12 AP CK 0062
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2567 of 2009

Pothula Venkata Reddy @ Pothula Venkata Reddy Arya (died)
per L.Rs. APPELLANT

Vs

B. Suseela and Others RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Civil Practice Rules — Rule 28
Hindu Succession Act, 1956 — Section 6

Citation : (2010) 3 ALT 478

Hon'ble Judges : G. Bhavani Prasad, J

Bench : Single Bench

Advocate : C.R. Pratap Reddy, for the Appellant; A.M. Srinivasa Ranga Chary,
for V. Sreenivasulu, for the Respondent

Judgement

G. Bhavani Prasad, J.—This Civil Revision Petition is directed against the order dated 16-02-2009 in LA. No. 2042 of 2008 in O.S. No. 26 of 2007 on the file of the Court of Principal District Judge, Medak at Sangareddy.

2. The petition was filed by the original plaintiff and his two sisters seeking amendment of the plaint, which was originally filed for partition between the original plaintiff and defendant Nos. 1 to 10 in respect of suit schedule property claimed to be the joint family property left by late P. Bhoomi Reddy, who died intestate on 01-04-1952.

3. The original plaintiff pleaded in the plaint that as late P. Bhoomi Reddy died long back before the Hindu Succession Act, 1956 (for short "the Act") came into force, his daughters had no shares in the joint family property. Now by way of this application, two daughters of late P. Bhoomi Reddy are seeking to come on record as plaintiff Nos. 2 and 3 claiming that in view of amendment of Section 6 of the Act, that had come into force during the pendency of the proceedings, they also became entitled to shares in the suit properties. Plaintiff Nos. 2 and 3, therefore, desired that the contents of the original plaint be amended accordingly

in full including their right to a share in view of Section 6 of the Act and consequently, a change in the shares claimed originally by plaintiff No. 1.

4. The request was opposed by the contesting defendants stating that the entire plaint is sought to be, substituted by a new plaint and as such, an outright replacement of the original claim with a new claim is impermissible under the guise of the impleadment.

5. The learned District Judge in his order had considered the objection about the disentitlement of the sisters to any share and also the total replacement of the original plaint with a new plaint and came to the conclusion that the question whether the two daughters of late P. Bhoomi Reddy are necessary parties or not will be decided after recording the evidence in the suit and the question whether the amendment to Section 6 of the Act entitles the daughters to a share will also be decided as a question of law while determining the rights of the parties to their respective shares in the suit properties. Therefore, only subject to the contentions raised by the contesting defendants, regarding the rights and interests of the petitioners, the learned District Judge permitted impleadment of plaintiffs 2 and 3 in the suit and consequential amendments in the plaint.

6. The revision petitioners 1 to 9, who are defendants 2 to 10 in the suit, questioned the said order on the ground that the deletion of the paragraphs and substitution of paragraphs in the plaint cannot be considered to be consequential to the impleadment of the parties and under the guise of consequential reliefs, the entire pleadings were replaced by new pleadings. This de novo plaint caused prejudice to the rights of the defendants and if third parties want to have any legitimate claims agitated in the suit, they should have come on record as defendants but not as co-plaintiffs.

7. Heard Sri C.R. Pratap Reddy, learned Counsel for the revision petitioners and Sri A.M. Srinivasa Ranga Chary, learned Counsel for respondent Nos. 1 to 3, plaintiff Nos. 1 to 3.

8. Sri C.R. Pratap Reddy, learned Counsel for the revision petitioners, brought to notice the decision reported in Dr. Dilip Kumar Renapurkar Vs. Vivek Pandav and Others, wherein the question under consideration was whether a person who had no unity of interest with the plaintiff can be transposed from being a defendant as co-plaintiff. The learned Judge did not agree to such an attempt as the original plaintiff, who is the master of the suit, opposed the transposition of the defendant as plaintiff, unlike in the present case where the plaintiff had absolutely no objection for the sisters being impleaded in the manner in which the sisters requested. It is also true that the learned Judge had incidentally stated that the pleadings of one party cannot be permitted to be amended by another party as such a course is unknown to law. But, here, the original plaintiff also joined with his sisters in seeking changes in the original plaint claiming the same to be consequential to the impleadment of the sisters permissible under Rule 28 of the Civil Rules of Practice.

9. The other decision in Alkapuri Co-operative Housing Society Ltd. Vs. Jayantibhai Naginbhai (deceased) Thr. LRs., relied upon by the learned Counsel for the revision petitioners is about persons having an independent cause of action trying to get the suit amended and about introduction of a cause of action in the suit, which had arisen prior to the date of institution of the suit. As a suit for partition had already been instituted by the brother herein, the sisters could not have taken recourse to any new and independent suit for partition and could have agitated their rights, if any, only in this suit and the cause of action for the sisters to seek partition was claimed to have arisen due to the amendment of the Central Act subsequent to the suit. They could not have been referred to an independent suit for partition under the circumstances and even Sri C.R. Pratap Reddy, learned Counsel for the revision petitioners, stated that he had no objection for the sisters coming on record as defendants, but they cannot come on record as plaintiffs by substituting the entire plaint with a new plaint, deleting the specific contentions of the original plaintiff about disentitlement of the sisters to any share in the suit properties.

10. Similarly, the learned Counsel for the revision petitioners also referred to Ramaswami Reddi Vs. Deivasigamani Pillai and Others, wherein also it was held that it would not be right for the Court to implead a person with a contrary claim to that set up by the original parties as co-plaintiff and ask the defendant to fight the newly added plaintiff, even at the request of the other colluding plaintiff. A perusal of the decision shows that transposition of defendant No. 8 therein as plaintiff No. 2 notwithstanding the opposition of the other defendants was almost after the trial to the prejudice of the other defendants and the finding of the trial Court was about the absence of title for the original plaintiff, but the presence of title for the transposed plaintiff. The decision is not only distinct on facts but also in the present case, the trial did not commence before the impleadment of the sisters and the contesting defendant Nos. 1 to 10 were not taken by surprise by any plea introduced through the impleadment of plaintiff Nos. 2 and 3.

11. In Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., , which is also referred to by Sri C.R. Pratap Reddy, the introduction of an entirely different new case and seeking to displace the plaintiff completely from the admissions originally made by the defendants in the written statement was deprecated. The effect of the decision of the Apex Court is obviously that though inconsistent pleas can be made in the pleadings, the substitution of the original pleadings with amended pleadings cannot be to such a disadvantage to the opposite parties as to be deprived of the benefit of any admissions or other statements made in the original pleadings. As such, if the consideration of the original pleadings by the original plaintiff were to be kept in tact for the trial court to determine on merits, the impleadment of plaintiff Nos. 2 and 3, probably cannot be frowned upon by the contesting defendants.

12. Similar is the decision of the Apex court in Heeralal Vs. Kalyan Mal and Others, relied on by Sri C.R. Pratap Reddy, learned Counsel for the revision

petitioners, wherein also the Apex Court laid down that the total displacement of the case of the plaintiff by withdrawing admissions originally made by the defendants through an amendment of the written statement would cause irretrievable prejudice to the plaintiff. The Apex Court, therefore, concluded that the amendment should be disallowed in so far as it amounts to withdrawal of an earlier admission. If the original pleas taken by the first plaintiff in the original plaint were to be directed to be considered on merits alongwith the pleas now set up by plaintiff Nos. 2 and 3, the mischief that has to be avoided as per the principles laid down by the Apex Court, can be avoided.

13. The learned Counsel for the revision petitioners, Sri C.R. Pratap Reddy also referred to Sheela Devi and Ors. v. Lal Chand and Anr. (2008) 8 SCC 581 while the learned Counsel for respondent Nos. 1 to 3, Sri A.M. Srinivasa Ranga Chary, referred to Parchuri Sambasiva Rao and Others Vs. Parchuri Srinivasarao and Others, about the legal consequences of the amendment to Section 6 of the Act making the daughters also coparceners by birth but as the application before the District Judge and the revision against it herein should be confined only to the question of impleadment of plaintiff Nos. 2 and 3 and preserving the rights and interests of both parties with reference to the original pleading and any amendment of the plaint, any expression of opinion on the existence or otherwise of any right for the plaintiff Nos. 2 and 3 to a share in the suit properties will be prejudicing their rights in the suit on the question that has to be decided on merits in the suit alone and not herein.

14. Therefore, with reference to the factual background and the legal scenario governing such situations, it has to be seen that the benefit of the contentions in the original plaint should not be denied to the contesting defendants 1 to 10, while the right of plaintiff Nos. 2 and 3 to come on record and also to place before the Court the basis for their claim to shares in the suit properties should be protected, while it should be again noted that the learned District Judge had in fact not expressed any opinion on the question whether they are entitled to any shares in the suit property under law and left open these questions rightly to be determined after full scale trial.

15. Sri A.M. Srinivasa Ranga Chary, learned Counsel for respondent Nos. 1 to 3, also stated that an additional written statement was filed by the contesting defendants after the impleadment of plaintiff Nos. 2 and 3, additional issues were framed, plaintiffs' evidence was completed and the suit is at the stage of continuance of the cross-examination of the defendant Nos. 11 to 21, on whose behalf chief affidavits are filed. Sri CR. Pratap Reddy, learned Counsel for the revision petitioners, had no definite instructions about the same, but the stage of the suit as of now, cannot be the determining factor in deciding this revision.

16. On a close consideration of the peculiar facts and circumstances, therefore, if the trial Court were to be directed to treat the basis for the claim of plaintiff No. 1 as the plaint originally presented by him to the Court and the basis for the claim of plaintiff Nos. 2 and 3 as the pleadings introduced by way of amendment

under Rule 28 of the Civil Rules of Practice consequent to their being impleaded as plaintiff Nos. 2 and 3 as per orders in I.A. No. 2042 of 2008 and if the trial Court were to be directed to consider the respective merits of the claims of plaintiff No. 1, plaintiff Nos. 2 and 3 and the contesting defendants independently on the basis of such consideration, the rights and interests of both parties are sufficiently safeguarded.

17. The Civil Revision Petition is ordered without costs with the above directions.