
(2002) 08 AP CK 0061

In the Andhra Pradesh High Court

Case No : CRP No's. 2514 and 2652 of 2002

Sayanna and Another

APPELLANT

Vs

Thimanna and Another

RESPONDENT

Date of Decision : 12-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 38E

Citation : (2002) 5 ALD 419 : (2002) 6 ALT 219 : (2003) 1 CivCC 595

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : K. Mahipathy Rao, for the Appellant; Y. Rama Krishnaiah, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—As common questions of fact and law are involved in these two revision petitions, they were heard together and are being disposed of by this common order.

2. CRP No. 2514 of 2002 is filed against the order dated 22-3-2002 in IA No. 286 of 2001 in O.S. No.91 of 1997 CRP No.2652 of 2002 is filed against the order dated 22-3-2002 in IA No.285 of 2002 in O.S.No.90 of 1997, on the file of the Court of the Junior Civil Judge, Narayanapet.

3. The plaintiffs are different, whereas the defendants are common in both the suits. The petitioners - plaintiffs filed the respective suits for perpetual injunction. It was their plea that the suit schedule property was purchased under two registered sale deeds dated 20-8-1988 and that on 10-10-1997 and 12-11-1997, the defendants tried to dispossess them and, therefore, the suits. It appears, initially, there was an ad interim injunction which was later vacated and as on today, there is no injunction against the respondents - defendants. Be that as it may, in both the suits, the respondents -defendants filed written statements opposing the suits. Their plea was that the property is governed by the

provisions of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 ("the Act"), that the Tenancy Tribunal conducted an enquiry and granted occupancy certificate u/s 38-E of the Act, that those proceedings were challenged by the alleged landlords/owners in appeal before the appellate authority which was dismissed and that against the orders of the appellate authority, revision, petitions were filed before this Court, which were also dismissed. They also alleged that in view of the above, the suits are not maintainable.

4. The suits were filed in 1997. After dismissal of the injunction petitions, the petitioners - plaintiffs filed two I. As as mentioned hereinabove seeking amendment of the pleadings under Order 6, Rule 17 of the Code of Civil Procedure, 1908. They wanted to amend the prayer to that of seeking declaration. In effect, they wanted to convert the suit for perpetual injunction into a suit for declaration of title and recovery of possession.

5. The trial Court by orders dated 22-3-2002, dismissed the applications on the ground that they are barred by limitation and that if the amendment is allowed, it would cause injustice to the respondents -defendants.

6. Sri K. Mahipathy Rao, learned Counsel for the petitioners in both the CRPs. would submit that while considering the applications for amendment of the pleadings, the Court should adopt a liberal approach. He would also submit that even in the original suits all the facts are pleaded and no effort was made to bring new facts on record and by allowing the amendment even if the question of limitation is involved, having regard to the plea in the written statement that the suits are not maintainable, the lower Court ought to have allowed the applications.

7. Sri G. Ramakrishnaiah, learned Counsel for the respondents-defendants, per contra, contends that by reasons of Section 99 of the Act, the suits are barred by limitation and if the amendment is allowed, it amounts to conferring jurisdiction on the civil Court which is specifically barred by the statute. He would also submit that the respondents were granted occupancy certificate, u/s 38-E of the Act way back in 1973 and when the plea was prima facie accepted and the injunction petitions were dismissed, the petitioners - plaintiffs filed these applications, which are not maintainable.

8. The law with regard to amendment of pleadings is well settled. It is axiomatic that a party to a suit can always seek amendment of pleadings at any time during the trial or during its pendency before appellate Court. It is also well settled that the Court should bestow liberal approach in dealing with the amendment applications. The grant of applications for amendment would, however, be subject to three limitations, namely, (i) when the nature of the suit is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action which tends to prejudice the other party; and (iii) when allowing amendment application defeats the law of limitation. In this case, as rightly contended by the learned Counsel for the respondents-

defendants, if the amendment applications are allowed, it would cause prejudice to the defendants, for two reasons. It might result in the petitioners - plaintiffs putting up plea of adverse possession to deny the very occupancy certificate issued u/s 38-E of the Act. Further, the question of limitation comes, for the petitioners had admittedly filed the suits in 1997 and that would be, prima facie, beyond the period of 12 years, as there is an allegation that the defendants had been in occupation of the land since the occupancy certificate was granted. Further, in my considered opinion, when a suit is filed initially for perpetual injunction, the subsequent application for amendment seeking to convert the suit into one for declaration of title is not maintainable. A reference may be made to the judgments of the Supreme Court in Tarlok Singh Vs. Vijay Kumar Sabharwal, , and T.L. Muddukrishanan and another Vs. Smt. Lalitha Ramchandra Rao, .

9. In Tarlok Singh (supra), the Supreme Court considered the question whether the suit which was initially instituted for perpetual injunction and subsequently converted into one for specific performance, was within the period of limitation. While holding that the suit is barred by limitation, the Supreme Court observed thus:

.....We think that parties had, by agreement, determined the date for performance of the contract. Thereby limitation began to run from 6-4-1986. Suit merely for injunction laid on 23-12-1987 would not be of any avail nor the limitation began to run from that date. Suit for perpetual injunction is different from suit for specific performance. The suit for specific performance in fact was claimed by way of amendment application filed under Order 6, Rule 17 CPC on 12-9-1979. It will operate only on the application being ordered. Since the amendment was ordered on 25-8-1989 the crucial date would be the date on which the amendment was ordered by which date, admittedly, the suit is barred by limitation. The Courts below, therefore, were not right in decreeing the suit.

10. In Muddu Krishna (supra), the Supreme Court again dealt with the question of limitation where an application for amendment of plaint was filed and held:

.....it must be held that for the purpose of limitation, what is material is that the limitation begins to run from the date the parties have stipulated for performance of the contract. The suit is required to be filed within three years from the date fixed by the parties under the contract. Since the application for amendment of the plaint came to be filed after the expiry of three years, certainly it changed the cause of action as required to be specified in the plaint. The suit for mandatory injunction is filed and the specific performance was sought for by way of amendment. The cause of action is required to be stated initially in the plaint but it was not pleaded. It was sought to be amended, along with an application for specific performance which, as stated earlier, was rejected. Under these circumstances, even by the date of filing of the application, namely, November 5, 1992, the suit was barred by limitation. The High Court, therefore, was right in refusing to permit the amendment of the plaint.

11. The revision petitions are mainly decided having regard to the law laid down by the Supreme Court, and the question of maintainability of the suits u/s 99 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, has not been considered by this Court. It is open to the parties, especially, the defendants, to seek such relief from the trial Court.

12. The civil revision petitions, for the above reasons, fail and are accordingly dismissed. No order as to costs.