
(1999) 08 AP CK 0101
In the Andhra Pradesh High Court
Case No : CRP No. 829 of 1996

Shaik Ghouse Mohideen

APPELLANT

Vs

Punagani Erikamma alias Settamma and others

RESPONDENT

Date of Decision : 17-08-1999

Acts Referred:

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

Citation : (1999) 5 ALD 604 : (1999) 5 ALT 572 : (1999) 3 CivCC 643

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Advocate : Mr. E.S. Ramachandra Murthy, for the Appellant; Mr. R. Subba Rao, for the Respondent

Judgement

1. The Order in IA No.163 of 1995 in AS No.4 of 1990 on the file of Subordinate Judge, Rajampet, dated 13-2-1996 refusing amendment of written statutory under Order VI, Rule 17 CPC, is assailed in this CRP.
2. The facts in brief are that the revision petitioners are defendant Nos.2 to 7 and 9 in OS No.87 of 1985 and they sought for an amendment of written statement to enable them to take the plea of adverse possession and that the suit is not maintainable as the suit schedule is incorrect and the property belongs to the Government, who is a necessary party.
3. The petition is resisted by the respondents-plaintiffs on the ground that the new pleas completely alter the nature of the defence and that there are no bona fides in the proposed amendment. The learned Subordinate Judge, on a consideration of the rival contentions, held that the plea sought to be taken is entirely a new plea which will change the nature and character of the defence and accordingly dismissed the petition. Hence, the revision petition.
4. Sri E.S. Ramachandra Murthy, learned Counsel for the revision petitioners strenuously contended that such an amendment is permissible in view of subsequent events as held in Shikharchand Jain Vs. Digamber Jain Praband

Karini Sabha and Others, . Sri R, Subba Rao, learned Counsel for respondents on the other hand contended that the new plea will alter the nature of the defence; that it is not a bona fide plea and not permissible to be amended as held in *Raja Vasudev Pillai v. Life Insurance Corporation of India*, 1980 (1) An.WR 265, and that a *denovo* trial will be required if Government is to be added as a party. Thus he supported the order under revision.

5. The principles laid down in the judgment of *Shikharchand Jain v. Digambar Jain Praband Kanni Sabha*, AIR 1974 SCI 178 (cited *supra*) are well known. Whenever there are subsequent developments or changes, it is open to the parties to seek moulding of the reliefs appropriately. I shall now consider whether there is any such subsequent development which entitles the revision petitioners to seek an amendment of their written statement as they are now contending. It is evident from the impugned order that the revision petitioners had filed their written statement long back admitting that they are in permissible possession of the suit schedule property. At the fag end of the trial, they want to turn round and say that their possession is adverse to the plaintiffs. It is not as though they came into possession subsequent to the filing of the written statement or that their possession became adverse later on. What they want to amend is that their possession right from the beginning is adverse. It is, therefore, not known as to how it can be said that there is a subsequent event or development which entitles them to seek amendment. On the contrary having taken a stand that they are in permissive possession, they are precluded from taking a totally inconsistent plea in the written statement that they perfected their title by adverse possession. These two pleas run counter to each other and hence such new pleas which alter the character of their defence cannot be permitted. I do not find any infirmity in the impugned order.

6. In the result, the revision petition is dismissed, but without costs.