
(2008) 07 AP CK 0062
In the Andhra Pradesh High Court
Case No : CRP No. 1445 of 2008

Siluveru Lakshamma	Vs	APPELLANT
Siluveru Sankaraiah and Others		RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

Citation : (2008) 5 ALD 322 : (2008) 5 ALT 211

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : K. Rathanga Pani Reddy, for the Appellant; K. Soma Konda Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This Court ordered notice before admission on 23.4.2008 and granted interim stay for a limited period, which is being extended from time to time.

2. Sri K. Somakonda Reddy, learned Counsel, entered appearance on behalf of the respondents and at the request of the learned Counsel on record, this C.R.P., is being disposed of finally at the stage of admission.

3. Sri K. Rathanga Pani Reddy, the learned Counsel for the petitioner, would maintain that the amendment which had been prayed for in the plaint is only ancillary to the main relief prayed for in the suit. The learned Counsel also would maintain that the Court below should have appreciated that the suit is filed for cancellation of gift deeds obtained by the defendants 1 and 2 by playing fraud, and consequential relief of possession, the amendment sought to be introduced would neither change the nature of the suit nor if allowed, would cause any prejudice at all. The learned Counsel further would maintain that to avoid multiplicity of proceedings, the amendment could have been allowed by the learned I Additional District Judge, Kurnool, instead of dismissing the said

application. The learned Counsel placed strong reliance on the decision of the Apex Court in M. Satyanarayana Vs. Bhimavaram Municipal Council and Another, .

4. On the contrary, Sri K. Somakonda Reddy, learned Counsel representing the respondents, would maintain that the suit was posted for arguments and at that stage this application has been thought of. The learned Counsel also had taken this Court through the reasons that had been recorded by the learned I Additional District Judge, Kurnool and would maintain that in the light of the amended proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) unless the conditions specified in the proviso are satisfied, the application cannot be allowed. The learned Counsel also laid emphasis on the aspect that this application had been thought of at the belated stage when the suit was posted for arguments. The learned Counsel placed strong reliance on the decision of the Apex Court in Chander Kanta Bansal Vs. Rajinder Singh Anand, .

5. Heard both sides. Perused the reasons recorded by the learned I Additional District Judge, Kurnool.

6. The unsuccessful petitioner-plaintiff being aggrieved by the order made in IA No. 949 of 2006 in OS No. 7 of 2006 on the file of the learned I Additional District Judge, Kurnool, had preferred the present C.R.P. The said application was filed under Order VI Rule 17 read with Section 151 of CPC praying for amendment of the plaint.

7. It is stated by the petitioner-plaintiff that she filed a suit for cancellation of three gift deeds obtained by the defendants 1 and 2 by playing fraud on her. But due to oversight, she omitted the prayer for consequential relief of possession of plaint schedule property. Further, it was stated that the relief of possession is only ancillary to the main relief of cancellation of gift deeds and if the amendment of the pleadings as prayed for is not allowed, she would be put to serious prejudice and in the event of amendment being allowed, the respondents would not be put to any serious prejudice.

8. The application was resisted by filing a counter-affidavit in detail.

9. The learned Judge having framed the point for consideration at Para 4, recorded reasons at Paras 5, 6, 7 and 8, and ultimately dismissed the application. Aggrieved by the same, the present C.R.P., had been preferred.

10. The learned I Additional District Judge, Kurnool had referred to the decision of the Apex Court in Salem Advocate Bar Association, Tamil Nadu v. Union of India WP (Civil) No. 496 of 2002 reported in 2002 (6) ALD 34 (SC) and also referred to the amended provisions of the Code of Civil Procedure, 1908 and laid emphasis on the language of Order VI Rule 17 of CPC, and came to the conclusion that the petitioner-plaintiff failed to show that in spite of due diligence, such amendment could not have been prayed for earlier and accordingly, dismissed the application.

11. Sri K. Rathanga Pani Reddy, placed strong reliance on State of A.P. and Ors.

v. Pioneer Builders, A.P. (supra), wherein the Apex Court at Para 20 held as under:

Principles governing amendment of pleadings are well-settled. Order VI Rule 17, C.P.C. deals with the amendment of pleadings and provides that the Court may at any stage of the proceedings allow either party to alter or amend pleadings in such a 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. It is true that though an amendment cannot be claimed as a matter of right under all circumstances, yet the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. It is equally well-settled that unless serious injustice or irreparable loss is likely to be caused to the other side, the Court should adopt liberal approach and not a hyper-technical approach particularly in a case where the other side can be compensated with costs. Dominant object to allow the amendment in the pleadings liberally is to avoid multiplicity of proceedings (See: L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., ; Smt. Ganga Bai v. Vijay Kumar and Ors. (1974) 2 SCC 303 and B.K.N. Narayana Pillai Vs. P. Pillai and Another,). Nevertheless, one distinct cause of action cannot be substituted for another nor the subject-matter of the suit can be changed by means of an amendment. The following passage from the decision of the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung AIR 1922 PC 249, succinctly summarises the principle which may be kept in mind while dealing with the prayer for amendment of the pleadings:

All rules of Court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit.

12. It is no doubt true that the amendment of the pleading normally be allowed liberally, when such amendment of the pleading does not change the nature or character of the suit and also to avoid multiplicity of the proceedings, as the case may be. However, the Apex Court in Chander Kanta Bansal's case (supra), while considering the proviso appended to Order VI Rule 17 of CPC and the effect of delay and laches, observed that delayed amendment which appeared to be an after thought to be disallowed, and the condition of "due diligence" as prescribed in the proviso to Order VI Rule 17 of Civil Procedure Code, 1908 also not satisfied, in deserving cases, the Court can allow the delayed amendment by compensating the other side by awarding costs.

13. On a careful analysis of the facts, here is a party, the petitioner-plaintiff, who approached the Court by moving an application praying for amendment at a very belated stage i.e., at the stage of arguments. Even if the averments made in the

affidavit be carefully examined, no reasons worth mentioning had been explained to get over the rigour of the proviso specified supra. Hence, this Court is satisfied that the impugned order does not suffer from any illegality whatsoever. Accordingly, the CRP shall stand dismissed, at the stage of admission. No order as to costs.