
(2003) 11 AP CK 0055
In the Andhra Pradesh High Court
Case No : CRP No. 3913 of 2003

Singilidevi Veera Venkata Ananthalakshmi and Another	APPELLANT
Vs	
Bhamidipati Seetharamayya (died) and Another	RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 31(2)
Specific Relief Act, 1963 — Section 21(5), 40(2)

Citation : (2004) 1 ALD 51

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

Bench : Single Bench

Advocate : M. Krishna Mohan Rao, for the Appellant; V.C.H. Naidu, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—This civil revision petition is filed by the petitioners/plaintiffs as against an order dated 30-3-1998 made in I.A. No. 96 of 1998 in O.S. No. 38 of 1992 on the file of the Senior Civil Judge, Peddapuram.

2. The revision petitioners/plaintiffs moved an application in I.A. No. 96 of 1998 in O.S. No. 38 of 1992 on the file of the Senior Civil Judge, Peddapuram, praying the Court to permit them to amend the plaint and the substance of the amendment was that the suit schedule property was acquired by the Government during the pendency of the suit and that OP No. 65 of 1988 is pending on the file of the Senior Civil Judge, Peddapuram and that the said OP was registered on a reference made to the same Court u/s 31(2) of the Land Acquisition Act and that the compensation amount was deposited in the said Court and hence the amendment is prayed for paying the relief of compensation in lieu of or in addition to the relief of specific performance prayed for in the suit.

3. Respondents filed a counter and had opposed the said application on the ground that the petitioners are fully aware of the acquisition made by the

Government and the compensation cannot be paid to them unless the sale deed is executed in their favour and the application is a belated one and the intention of the petitioners is only to drag on the matter.

4. The learned Senior Civil Judge, Peddapuram, ultimately dismissed the application mainly on the ground that the parallel proceedings in OP No. 65 of 1988 are pending and hence the proposed amendment cannot be allowed.

5. Sri M.S. Rama Chandra Rao, the learned Counsel representing the, petitioners submitted that in view of proviso to Section 21(5) of the Specific Relief Act, 1963 (hereinafter in short referred to as "Act" for the purpose of convenience), when the relief of compensation is prayed for at any stage of the proceedings, the plaintiff in the suit has to be allowed to amend the plaint, despite the same, the learned Judge had dismissed the said application. The learned Counsel also submitted that the view expressed by the learned Judge below that the said OP No. 65 of 1988 pending u/s 31(2) of the Land Acquisition Act, is a parallel proceeding cannot be sustained since the said proceeding is for apportionment of the compensation. The learned Counsel also had drawn the attention of this Court to other provisions of the aforesaid Act and had emphasised on the language employed in the proviso to Sub-section (5) of Section 21 and the proviso to Sub-section (2) of Section 40 of the Act and had submitted that the intention of the Legislature in introducing these provisions may have to, be borne in mind while deciding amendment applications especially where the main reliefs prayed for are covered by either Section 21 or Section 40 of the said Act. The learned Counsel also had drawn the attention of this Court to a decision in Jagdish Singh Vs. Natthu Singh, .

6. Per contra, Sri V. Ch. Naidu, the learned Counsel representing the respondents opposed the petition on the ground that this is a belated application thought of at the fag end of the proceedings and the same cannot be allowed. The learned Counsel also had further maintained that as the main dispute relating to the apportionment of the compensation is pending between the parties u/s 31(2) of the Land Acquisition Act, it is impermissible to permit the petitioners to amend the pleadings. The learned Counsel also no doubt made certain submissions that this is not a fit matter to exercise the power of superintendence under Article 227 of the Constitution of India.

7. Heard both the Counsel.

8. It is no doubt true that Order VI Rule 17 of the CPC as it stands as on today reads as hereunder:

"Amendment of pleadings :--The Court may at any stage of 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."

9. However in the CPC (Amendment) Act, 2002, (Act 22/ 2002) in repeal and savings Section 16 Sub-section 2(b) it is specified notwithstanding that the provisions of this Act have come into force or repeal under Sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897 (10 of 1897).

(b) The provisions of Rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the CPC (Amendment) Act, 1999 (46 of 1999) and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the CPC (Amendment) Act, 1999 (46 of 1999) and Section 7 of this Act.

10. In view of the same, it is contended that the ground of delay cannot be made as a ground applying the proviso, which had been introduced in the present provision. It is pertinent to note that Sub-section (5) of Section 21 of the Act is clear and explicit and the said provision reads as hereunder:

"21(5) No compensation shall be awarded under this Section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the Court shall, at any stage of the proceedings, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation :--The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section."

11. Likewise Section 40 Sub-section (2) of the said Act reads as hereunder:

"40(2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint:

Provided that, where no such damages have been claimed in the plaint, the Court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim."

12. It is clear from the language employed in the respective provisos that at any stage of the proceedings ordinarily an amendment may have to be allowed if the conditions are satisfied, specified, in the said provisions.

In Jagdish Singhs case (supra), the Apex Court held as under:

"If the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance the Court will allow the amendment at any stage of the

proceeding. That is a claim for compensation falling u/s 21 of the Specific Relief Act, 1963 and the amendment is one under the proviso to Sub-section (5). But different and less liberal standards apply if what is sought by the amendment is the conversion of a suit for specific performance into one for damages for breach of contract in which case Section 73 of the Contract Act is invoked. This amendment is under the discipline of Rule 17, Order 6, CPC. The fact that Sub-section (4), in turn, invokes Section 73 of the Contract Act for the principles of quantification and assessment of compensation does not obliterate this distinction."

13. While dealing with Section 40(2) proviso of the Act in a decision in Jagdish and Others Vs. Har Sarup, , it was held as under:

"Whereas under "Order 6, Rule 17 the Court has a discretion, the proviso to Sub-section (2) of Section 40 makes it imperative for the Court to allow the amendment. It is for that reason that the word "shall" has been used in the proviso to Sub-section (2) in contradiction to the word "may" used under Order 6, Rule 17. The proviso further shows that however belated the request for amendment may be and even if the claim put forward by way of amendment is hopelessly barred by limitation it is the bounden duty of the Court to allow the amendment."

14. In a decision in V.R. Nathan Vs. Mac Laboratories (P.) Ltd., , while dealing with the proviso u/s 40(2) of the Act, it was held that the proviso is imperative and the Court has no option but to grant the amendment of the plaint and the fact that the application is belated is immaterial and the only discretion left to the Court is as regards the terms on which the plaintiff may be permitted to amend.

15. As can be seen from the language employed in the proviso to Sub-section (5) of Section 21 of the Act, it is clear that at any stage of the proceedings, the amendment may have to be allowed. The other objection raised is that inasmuch as OP No. 65 of 1988 u/s 31(2) of the Land Acquisition Act is pending, the amendment cannot be allowed. In my considered opinion, the said OP is on reference for apportionment of compensation and the relief prayed for by way of amendment in the present application is to have additional relief. Whether the relief in the facts and circumstances can be granted or not, will definitely amount to touching the merits and de-merits of the matter which may have to be decided ultimately while deciding the main suit and this need not be gone into at this stage. The proceedings are different proceedings and it may be that the result of one may depend upon another. It is needless to say that both the proceedings for the convenience of the parties may be tried together, if the parties are so advised in this regard. However, it is suffice to state that when there is a provision specified in the statute i.e., the proviso to Sub-section (5) of Section 21 of the Act, despite that, disallowing an amendment application either on the ground that there is a parallel proceeding pending or on the ground that the application is belated, in my considered opinion is an illegality while

exercising the jurisdiction which may have to be rectified while exercising powers under Article 227 of the Constitution of India. For the aforesaid reasons, the impugned order is hereby set aside.

16. Accordingly, the CRP is allowed. No costs.