
(1993) 06 AP CK 0027

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1219/91

Surabhi Baburao

APPELLANT

Vs

Vullingala Suryanarayana and Others

RESPONDENT

Date of Decision : 18-06-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 10
Limitation Act, 1963 — Article 58, 65

Citation : (1993) 2 ALT 317

Hon'ble Judges : P. Ramakrishnam Rao, J

Bench : Single Bench

**Advocate : E.V. Bhagiratha Rao and Syed Shareef Ahmad, for the Appellant;
K.V. Subrahmanya Narusu, for the Respondent**

Final Decision : Dismissed

Judgement

P. Ramakrishnam Raju, J.—The plaintiff in O.S.No. 304 of 1984 on the file of the Additional District Munsif's Court, Anakapalli, is the petitioner who is challenging an order refusing amendment to the plaint.

2. The petitioner-plaintiff filed the suit for recovery of rents against the respondents who are his tenants. The respondents took the stand that the petitioner has no title and that there is no relationship of tenant and landlord between them. In view of the denial of title by the respondents, the petitioner was constrained to file an application for amendment of the plaint seeking the relief of declaration of title to the plaint schedule property. The respondents opposed the said application under three counts. Firstly, inasmuch as the proposed amendment ousts the jurisdiction of the Court; secondly, it changes the form and cause of action of the suit; and thirdly, the relief of declaration of title has been barred by time and as such, the amendment cannot be permitted.

3. The lower Court has found that there is no change in the form of the suit or cause of action. But, however, the objection regarding the question of limitation was upheld, holding that the suit would be barred by time in respect of the

proposed relief of declaration. It also found that by allowing the proposed amendment, the Court would lose the jurisdiction to entertain the suit. Accordingly, the application for amendment was rejected. Challenging this order, the petitioner filed the above revision petition.

4. Sri. E.V. Bhagiratha Rao, the learned Counsel for the petitioner submits that both the grounds relied upon by the lower Court are unsustainable.

5. Sri K.V. Subrahmanya Narusu, however, tried to sustain the order.

6. The suit was originally filed for recovery of rents from the year 1981 on the ground that the respondents are lessees in respect of agricultural land of an extent of Ac. 3-61 cents. The learned Counsel for respondents, submits that by adding the relief of declaration of title, the jurisdiction of the Court would be ousted and, therefore, such an amendment cannot be permitted.

7. Order 6, Rule 17 C.P.C. runs as follows:-

17. "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 question in controversy between the parties."

It is necessary to notice the provisions of Order 7, Rule 10 C.P.C. at this juncture. The same is extracted hereunder:-

10. (1) (Subject to the provisions of the Rule 10A, the plaint shall) at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted."

A combined reading of both the provisions make it abundantly clear to one's mind that Order 6, Rule 17 C.P.C. makes it obligatory on the Court to consider an application for amendment in any pending suit. On a consideration of the said application, if it exceeds the jurisdiction of the said Court, it has to invoke the provisions of Rule 10 to Order 7 C.P.C. which again makes it obligatory on the Court to return the plaint for being presented to a proper Court.

8. A controversy, whether in such circumstances, the Court should return the plaint along with the application for amendment, or consider the application for amendment and then only return the plaint if it exceeds the jurisdiction of that Court in view of allowing the amendment, was set at naught by a Division Bench of this Court in *C. Janardhan Rao v. C. Ratnamala* 1986 (2) APLJ 203 which overruled the decisions reported in *Padmanabha Talkies v. Gowthami Pictures*, 1971 (1) APLJ 375 and *Kaka v. Kanhayya Lala* 1980 (1) An.W.R. 341 and by authoritatively laying down the dicta that the jurisdiction of the Court in which the plaint was originally filed, is not taken away or ousted to consider an amendment to the plaint which eventually ousts the jurisdiction of that Court. If on a consideration of the application for amendment, the jurisdiction of the Court is lost, the proper course is to invoke the provisions of Order 7, Rule 10 C.P.C.

and return the plaint for presentation before a proper Court. For this view, the words "at any stage of the suit", occurring in Rule 10 to Order 7 C.P.C. lend ample support. The Court is not denuded of its jurisdiction to entertain an application for amendment in a duly constituted suit, merely because the consequences of the decision of the application in a particular way oust the jurisdiction of the Court subsequently. Therefore, the fact that jurisdiction of the Court would be ousted is no ground to refuse an amendment of the plaint. In view of the binding authority of the Division Bench in *C. Janardhan Rao v. C. Ratnamala* 1986 (2) APLJ 203, I have no hesitation in holding that the Court would not lose jurisdiction to consider the application for amendment. If on a consideration of the application for amendment, if the Court loses its jurisdiction, the proper course is to return the plaint under Order 7, Rule 10 C.P.C.

9. The next ground relied upon by the lower Court in refusing the amendment is equally unsustainable. The lower Court has felt that the relief under the proposed amendment is barred by time and as such, the question of allowing the amendment petition does not arise.

10. The declaration sought for by way of the proposed amendment is in respect of the immovable property. The lower Court erroneously thought that the proper Article that would govern the case is Article 58 which prescribes a period of three years to obtain the declaration when the right to sue accrues and not Article 65 of the Limitation Act which prescribes a period of 12 years for recovery of possession of Immovable property or any interest therein, based on title when possession of the defendant becomes adverse to the plaintiff. It is true, the parties have exchanged notices and the respondents issued a reply dated 7-3-1984 asserting their title that they have purchased the property under three registered sale deeds and prior to that they were in possession of the property as tenants. In the written statement also, which was filed in the year 1986, they have reiterated the same stand. However, amendment petition was filed in the year 1990. Therefore, the lower Court relying upon Article 58 of the Limitation Act, held that the period of three years has elapsed from the date of notice as well as from the date of filing of the written statement and as such, the proposed amendment, is barred by limitation.

11. Part V of the Limitation Act contains Articles, including Article 65, applicable for suits relating to Immovable property; whereas, Part III which contains Article 58 deals with suits relating to declaration. When there is a specific chapter viz., Part V relating to suits for Immovable property, Article 65 which is relevant Article which provides for limitation, has to be applied and not Article 58 which provides limitation for other declarations.

12. Adverse possession has to be established by the defendants if their possession is open, hostile as of right and continuous for a period of more than 12 years. As they have asserted their right adverse to the interest of the petitioner only under the reply notice dated 7-3-1984, it cannot be said by any stretch of imagination that they have established adverse possession. Therefore,

this ground also fails. However, it is needless to observe that it is open to the respondents to establish their plea of adverse possession in the suit at the time of trial.

13. Sri. K.V. Subrahmanya Narusu, the learned Counsel for the respondents, lastly contends that this application is filed at a belated stage and the same should be dismissed on the ground of laches.

14. It is true, the petitioner should have filed the suit, including the prayer for declaration of title, in view of the assertion of adverse possession in the reply notice issued by the respondents. At any rate the petitioner should have taken the amendment immediately after the written statement is filed with the same allegations. However, he did not do so. The mere delay in filing the application cannot be a ground to throw away the application for amendment.

15. As seen supra, the words "at any stage of the proceedings" occurring in Order 6, Rule 17 C.P.C. empowers the Court to consider and allow application for amendment for the purpose of determining the real controversy between the parties. I am also fortified by a decision of the Madras High Court rendered in A.T. Mathavan v. S. Natarajan AIR 1988 NOC 1 (Mad.), wherein, it was held that the plaintiff who has got title to the property should not be debarred from claiming possession in the alternative on the ground of delay. However, as there was delay in filing this application, the same can be allowed on terms. Under these circumstances, allowing the revisions, I direct the petitioner to pay a sum of Rs. 1,000/- by way of costs to the learned Counsel for the respondents, within a period of four weeks from to-day.

16. In view of the foregoing discussion, the Civil Revision Petition is allowed, the order of the lower Court is set aside, subject to the above condition. In default of payment of costs, as indicated above within the time stipulated, the Civil Revision Petition stands dismissed.