
(2010) 06 AP CK 0082

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4244 of 2006

T. Pedda Veeramma Reddy and Others	APPELLANT
Vs	
P. Lakshmid devi Reddy	RESPONDENT

Date of Decision : 18-06-2010

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Order 6 Rule 17, 151
Civil Rules of Practice — Rule 28

Citation : (2010) 5 ALD 746 : (2011) 1 RCR(Criminal) 371

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : P. Govind Reddy, for the Appellant; Gudapati Venkateswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This Civil Revision Petition is directed against the order, dated 12.04.2006 passed by the Principal Senior Civil Judge, Tirupathi in I.A. No. 607 of 2005 in O.S. No. 301 of 2001.

2. I have heard both the learned Counsel appearing on behalf of the parties.

3. The impugned order relates to amendment of plaint filed under Order VI Rule 17 and Section 151 of CPC r/w Rule 28 of Civil Rules of Practice by the respondent/plaintiff in a suit for partition claiming half share in the schedule mentioned property to include some more properties which are said to be liable for partition between the parties which were not discovered by the respondent at the time of filing of the suit since she was given in a marriage to a person residing in the State of Tamil Nadu and has been living there since long time.

4. The petition was opposed by the revision petitioners on the ground that the entire ancestral joint family properties were apportioned under a partition list dated 15.04.1985 and the properties sought to be annexed to the schedule by means of amendment fell to the share of the second petitioner/second defendant

and they are his self acquired properties. It was also contended by the revision petitioners that the amendment petition has been prompted by mala fides and the same was filed after a long lapse of four years, obviously with a view to protract the litigation to harass the revision petitioners.

5. The learned trial Court thought that the questions as to whether there was any partition in the properties fell to the second petitioner has to be decided during the course of the trial in the main suit and the proposed amendment will not alter the nature of the suit or cause of action if it is allowed and accordingly allowed the amendment petition by imposing costs of Rs. 500/- on the respondent because inordinate delay occurred in filing the amendment petition.

6. A plain reading of Order VI Rule 17 of CPC indicates that the object in allowing the amendments is for the purpose of determining the real questions in controversy between the parties and if the court thinks that such amendment is necessary, it may at any stage of the proceeding allow either party to alter or amend the pleadings in such manner and on such terms. The proviso lays down that the Court shall not entertain the application for amendment 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.

7. It requires to be noticed that Rule 17 of Order VI dealing with amendment of pleadings as it existed prior to C.P.C. (Amendment) Act, 1999 and C.P.C. (Amendment) Act, 2002 provided that "the Court may at any stage of the proceedings allow either party to alter or amend his 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."

8. The legislature thought that Rule 17 as it existed in its original form was being invoked by the parties invariably in every suit, appeal or proceedings, more particularly by the parties interested in protracting the litigation and considering the provision as the one quite often being misused, deleted Rule 17 from the Code by means of C.P.C. (Amendment) Act, 1999 (46 of 1999). However, the said amendment was not enforced owing to serious protests and demonstrations by the lawyers all over the country demanding retention of Rule 17 in the statute book.

9. The Parliament after reviewing the position, having wide enough consultations and discussions with the experts in the field of law including lawyers, restored Rule 17 by C.P.C. (Amendment) Act, 2002. This time, the Legislature inserted new proviso to the Rule which lays down that no application for amendment of the pleadings shall be allowed after trial has commenced unless the Courts comes to the conclusion that in spite of the due diligence the party could not have raised the matter before the commencement of trial.

10. By restoring Rule 17 with the said limitation, the Parliament appears to be

much concerned about misusing the provision quite often by the lawyers may be at the instance of their parties, invoking one time or other invariably in every matter. It is for the said reason the above mentioned proviso was inserted to Rule 17. The intention of the Parliament therefore is that if any party proposes to amend his pleadings, he has to be prompt in doing so and not later than the commencement of the trial. At the same time, it appears that the parliament visualized the fact that there may be justifiable cases where despite exercising due diligence the party could not be able to make an application for amendment even after commencement of the trial. Thus, from the acts of the parliament by omitting Rule 17 and restoring back the same provision with a proviso, it is to be necessarily understood that totally dispensing with the provisions relating to amendment cannot be contemplated because the parties or their counsel are bound to commit mistakes and at times when the case progresses, it may become necessary for a party to demonstrate his case effectively for the purpose of proper and complete adjudication and for that purpose, at any stage of the case, amendment would become necessary. Therefore, what is to be curtailed is the attitude of the parties/counsel in filing amendment applications to protract the litigation or to harass the opposite party or to defeat the right of a party which had already accused. But, when once the Court arrives at the conclusion that the application for amendment is genuinely made and out of necessity and with a view to remove any ambiguity, the Court shall be liberal in granting amendment at any stage of the proceedings. The proviso therefore is only a measure of caution against dilatory tactics but the real question to be considered is the genuineness of the application made seeking amendment. The delay can be compensated by money but shall not come in the way of adjudicating the rights of the parties properly. Therefore, if the amendment petition is filed after the trial had begun, it is obligatory on the part of the party seeking amendment to satisfy the Court that in spite of due diligence, he could not make the application at appropriate time. The Court can allow the amendment petition, if it is satisfied that the party could not pursue the remedy of seeking amendment in spite of exercising due diligence.

11. In the instant case, however the respondent filed the amendment petition prior to commencement of trial and the respondent only sought to include some more properties in the schedule annexed to the plaint. The proposed amendment is not in the nature of taking away any right which has accrued to the revision petitioners due to lapse of time nor does it change the nature of the case. I think that it is essential to adjudicate all the real questions in controversy between the parties and also for the purpose of avoiding multiplicity of litigation. In my opinion, the learned Court below has rightly exercised its jurisdiction in allowing the amendment petition and the impugned order does not require any interference in this revision.

12. Consequently, the Civil Revision Petition is dismissed without any order as to costs.