

(2013) 04 AP CK 0072

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1409 of 2013

Vallala Yasodha

APPELLANT

Vs

Vallala Naga Venkata Laxmi and 2 Others

RESPONDENT

Date of Decision : 24-04-2013

Acts Referred:

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

Citation : (2013) 04 AP CK 0072

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : N.V. Anantha Krishna, for the Appellant; M. Rajamalla Reddy, for the Respondent

Judgement

Samudrala Govindarajulu, J.—This revision petition is filed questioning order of the lower Court refusing to permit amendment of the plaint. Originally the suit is filed for permanent injunction by the petitioner and it was being contested by the respondents/defendants. Trial of the suit has commenced and evidence of the plaintiff as P.W.-1 was over. At that stage, the plaintiff filed the present petition in the lower Court for amendment of the plaint in order to include the relief of cancellation of the document No. 4615/2011, dated 08.06.2011. The said sale deed dated 08.06.2011 was executed by the defendants 1 and 2 in favour of the 3rd defendant in respect of the suit property. The said document was prior to filing of the suit in the lower Court. The suit was filed in August, 2011. The lower Court dismissed the petition on the ground that the plaintiff-petitioner was knowing about the said sale deed at least since the time of filing of the written statement and in spite of it the petitioner did not come forward with the prayer for amendment of plaint till after trial of the suit is commenced. It is contended by the petitioner's counsel that the petitioner is an old lady of 87 years and she is not well versed in law and that therefore she could not file the petition expeditiously. On the other hand, the respondents' counsel contended that the present petition for amendment is hit by proviso to Order VI Rule 17 C.P.C. The said provision reads as follows:

17. 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.

2. The above proviso, on plain reading reveals that initial prohibition for a party to approach the Court for amendment of pleading after commencement of trial, is not a rigid prohibition. The said initial rigidity was watered down by the Parliament itself by the latter part of the proviso to the effect that "unless the Court comes to the conclusion that in spite of due diligence, the party could not have been raised the matter before the commencement of trial". In a matter of this nature relating to seeking an additional prayer in the plaint, usually the party has no much role. It is for the advocate of the party to decide as to frame of the suit and as to the amendment to be sought by way of inclusion of an additional prayer in the suit. The party instructs the advocate only on the factual aspects of the case and not on legal aspects which are within exclusive domain of the legal counsel. Perhaps, during the course of P.W.-1's evidence it was thought that the sale deed dated 08.06.2011 executed by the defendants 1 and 2 in favour of the 3rd defendant has to be attacked directly. In the circumstances, I am of the opinion that the rigor of 1st part of proviso to Order VI Rule 17 C.P.C. can be reduced by way of imposing penalty on the petitioner by way of costs.

3. Secondly it is contended by the respondents' counsel that prayer for cancellation of sale deed dated 08.06.2011 is outside the scope of the existing suit for permanent injunction. No doubt, in a suit for permanent injunction simpliciter, possession of the plaintiff is the primary concern, the second or secondary concern being as to whether the plaintiff has got better title to the property than that of the defendants. In the secondary aspect to be decided in the suit for permanent injunction, the plaintiff has to necessarily attack the sale deed dated 08.06.2011. Since the sale deed dated 08.06.2011 is in respect of the suit property only and in between the defendants 1 and 2 on the one hand and the 3rd defendant on the other hand, scope of the suit may not be totally changed. The proposed amendment if allowed will only enlarge the procedure of the suit by way of giving permission to defendants to file additional written statement and framing additional issues before proceeding with further trial.

4. In the circumstances, this Court is of the opinion that the lower Court did not exercise its discretion properly and it resulted in dismissal of the petition refusing to give permission for amendment of the plaint. In the result, the revision petition is allowed setting aside impugned order passed by the lower Court and directing the lower Court to permit the plaintiff/petitioner to amend the plaint as

prayed for in I.A. No. 1166 of 2012 in the suit, subject to the plaintiff paying Rs. 500/- to the District Legal Services Authority, Khammam within 4 weeks from today; and in default, this order shall stand set aside automatically. No further extension of time will be granted.