

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 795 OF 2009

ORDER :

Heard Sri P.R. Prasad, learned counsel appearing for the petitioner and Sri E. Phani Kumar, learned counsel appearing for first respondent.

2. Notice to the second respondent was served by the petitioner on 5.7.2011 but, without noticing it, this Court on 23.11.2012 again directed the petitioner's counsel to pay process fee for service of notice on second respondent. On the ground that such process was not paid, the Civil Revision Petition appears to have erroneously dismissed against second respondent. This order cannot be sustained since the second respondent had already been served on 5.7.2011 by the petitioner. Therefore, the said order is recalled.

3. None appears for the third respondent even though notice has been served on the third respondent.

4. This Revision is filed challenging the order dated 19.6.2008 in I.A.No. 1145 of 2000 in O.S.No. 85 of 1997 of the V Additional Senior Civil Judge, Guntur.

5. The petitioner herein is the plaintiff in the suit. She filed the suit for declaration of her title to the plaint schedule property and for recovery of possession of the same. In the written statement filed by the respondents a plea was taken that the petitioner had executed GPA dated 25.6.1994 in favour of the second defendant/second respondent. In the plaint, the petitioner had already taken plea that he did not execute any GPA authorizing second defendant to execute a sale deed on her behalf, for selling the suit schedule properties to different persons.

6. She filed an application I.A.No. 1145 of 2000 under Order 6 Rule 17 C.P.C to amend the pleadings so that she can take an alternative plea that the second defendant had obtained her signatures on several documents and blank stamped papers and blank cheques and taking advantage of the same he brought into existence the registered GPA dated 25.6.1994 and on the strength of GPA he had managed to register the sale deed in respect of schedule property in favour of the first defendant. According to the affidavit filed in support of the said application, she stated that this information has been furnished to the earlier counsel but he did not incorporate it in the plaint; so she changed the advocate; and on legal advice she filed the present application for amendment of the plaint.

7. This application was opposed by the first respondent denying the truth of the averments sought to be incorporated by way of amendment in the plaint. It is also contended that the plea now sought to be introduced by way of amendment is a new story, which is distinct from the petitioner's original pleadings and this cannot be permitted. It is further contended that the nature of the claim would be changed and so the amendment application should be rejected.

8. By an order dated 19.6.2008 the Court below dismissed the application for amendment on the ground that the proposed amendment changes the subject matter of the suit, that it would create a new cause of action and it cannot be allowed, since the trial was about to

commence.

9. Questioning the same, this Revision is filed.

10. Learned counsel for the petitioner would contend that even before the trial commenced, the additional plea was raised and that the Court below erred in dismissing the application on the ground that it introduces the new cause of action in the suit. He also sought to contend that no prejudice would be caused to the defendants, as opportunity to file additional written statement or to amend the written statement in the light of the pleading now sought to be introduced by way of amendment, would be granted to the defendants/respondents.

11. Order 6 Rule 17 CPC, as it stood at the relevant time has been interpreted by the courts to allow either party to alter or amend his pleadings in such manner and on 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. Another purpose for permitting the amendments is that multiplicity of suits can be avoided and substantial justice would be advanced.

12. It is settled law that Courts ought not to go into the correctness of the case set up in the amendment at the time when it is considering whether or not to permit the amendment.

13. In *Musa Mivan V. Kadar Bux*^[1] and in *Mohd. Bin Salem V. Umaji*^[2], it has been held that even an amendment introducing a new ground of claim or an allegation of fact inconsistent with the original pleading may be allowed in proper cases if the Court thinks that just and necessary. The only restriction is that it will not allow an amendment changing a suit of one character into a suit of another character in the absence of special circumstances.

(*Rahimunnisa begum & others v. Mohd. Mohammadulla Khan Durrani*^[3]). It is also been held that a new ground in support of the relief claimed cannot be said to alter the character of the suit and should as a general rule be allowed. (*K. Laxman Rao V. Bhavani Singh*^[4] & *Bharat Das Bavaji V. Hindu Religious Endowments Board*^[5]).

14. In the present case by permitting the amendment, in my opinion, the nature of suit has not been altered because according to the plaintiff the GPA being relied upon by the defendants 1 & 2 was not valid.

15. Admittedly, the trial in the suit has not yet commenced. Therefore, if the amendment application is allowed no prejudice is caused to the respondents/defendants because they will have an opportunity to seek an amendment of the written statement appropriately or to file an additional written statement controverting the plea now sought to be raised by the plaintiff/petitioner. Therefore, I am of the opinion that the Court below erred in dismissing I.A.No. 1145 of 2000.

16. In this view of the matter, the Civil Revision Petition is allowed and the order dated 19.6.2008 in I.A.No. 1145 of 2000 of the V Additional Senior Civil Judge is set aside and the said I.A is allowed. There shall be no order as to costs.

17. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

Date: 09.06.2015
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[\[1\]](#) AIR 1928 PC 108
[\[2\]](#) AIR 1955 HYD 1 (2) (F.B)
3 2004 (2) ALD 511
4 AIR 1950 HYD 43
5 AIR 1932 MADRAS 603