

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3626 of 2014

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.08.09.2014 in I.A.No.2659 of 2014 in OS.No.61 of 2013 on the file of Principal District Judge, Kadapa.

2. The petitioner herein is the 1st defendant in the above suit.

3. He filed IA.No.2659 of 2014 in OS.No.61 of 2013 praying to reject the plaint in the above suit invoking Order VII Rule 11 C.P.C. on the ground of willful laches and deliberate conduct, apart from improper presentation of plaint.

4. The petitioner in that I.A. contended that originally respondent Nos.1 to 4/plaintiff had instituted on 17.07.2007 the suit before the Senior Civil Judge, Kadapa as OS.No.196 of 2007 for partition and separate possession of their share in the plaint schedule properties; that written statement was filed and then trial commenced; thereafter, the petitioner herein filed IA.No.3032 of 2012 under Order VII Rule 10 CPC praying for return of plaint in suit OS.No.196 of 2007 for presentation before proper court within the time fixed by the said court alleging that

the valuation of the relief in the plaint and payment of court fee thereon was not proper; the said application was not contested by respondent nos.1 to 4/plaintiffs in the said suit; thereafter, on 09.10.2012, I.A.No.3032 of 2012 was allowed giving three days' time to represent the plaint in proper court; that the said plaint was re-presented on 11.10.2012 before the Principal District Judge, Kadapa and numbered as OS.No.61 of 2013; that respondent Nos.1 to 4 had mis-represented that they had paid the court fee on the plaint on 12.06.2013 vide SR.No.9063 of 2013; but, between the date of presentation of plaint in the District Court on 11.10.2012 till 11.06.2013, no court fee was paid by plaintiffs; the delay in presentation of plaint after 09.10.2012 is not satisfactorily explained; that the Principal District Judge ought not to have registered the suit as OS.No.61 of 2013 on 24.06.2013 without informing petitioner and other defendants, and without issuing notice to them; that plaintiffs had also made several corrections, additions and omissions in the original plaint in OS.No.196 of 2007 while presenting it as OS.No.61 of 2013 in the Court of Principal District Judge without obtaining permission from court; that plaintiffs had also filed IA.No.1324 of 2013 on 26.03.2013 to condone the inordinate delay of (116) days in representing the plaint which was allowed *ex parte*, and another IA.No.1827 of 2013 on 16.06.2013 seeking condonation of delay of (43) days again in representing the plaint which was also

allowed *ex parte* on 17.06.2013; the petitioner was thus deprived of an opportunity to contest these applications; and that this conduct of respondent Nos.1 to 4 warrants an immediate rejection of the plaint under Order VII Rule 11 CPC.

5. I.A.No.2659 of 2013 was contested by respondent Nos.1 to 4/plaintiffs stating that plaint was re-presented in the District Court as per direction of Senior Civil Judge, Kadapa; that the office of Principal District Judge had taken certain objections and returned the plaint; there was delay in representing the returned plaint which was condoned in IA.Nos.1324 of 2013 and 1827 of 2013 under inherent powers; these applications are not covered under the Limitation Act, 1963; the said Court had inherent power to consider the said applications and condone the delay in re-presentation without notice to petitioner and other defendants and so no notice is required to be given to them before numbering of plaint; the endeavour of petitioner is to get plaint rejected somehow without facing trial of suit so that he can enjoy valuable property for himself without sharing it with respondent Nos.1 to 4; that the court fee was paid by them as directed by court, and that petitioner's application for rejection of plaint would not fall within under Order VII Rule 11 (a) to (f) CPC.

6. By order dt.08.09.2014, the Court below rejected the said application. It held that after the order was

passed on 09.10.2012 in IA.No.3032 of 2012 in OS.No.196 of 2007 by the Senior Civil Judge, Kadapa returning the plaint for presentation and proper court fee granting three days' time, the plaintiffs re-presented the plaint on 11.10.2012; re-presentation of plaint by plaintiffs was in the proper court and within the time fixed by the Court of Senior Civil Judge in his order dt.09.10.2012 in IA.No.3032 of 2012; the District Court had returned the plaint on 03.11.2012 with a direction to plaintiffs to file detailed order dt.09.10.2012 for verification of valuation and further directed them to pay correct court fee by granting seven days' time; thereafter, counsel for plaintiffs re-presented the plaint on 14.11.2012 stating that the lower court had issued endorsement transferring the plaint on the point of pecuniary jurisdiction of the suit; that valuation certificate of property on the date of filing of the suit is also appended, and that necessary court fee was paid in the account of the court; the court had returned the plaint again on 21.11.2012 stating that the suit is filed for partition and allotment of $\frac{1}{3}$ rd share of respondent Nos.1 to 4/plaintiffs and that in the relief portion it is stated that $\frac{1}{5}$ th share comes to Rs.6,31,226/- and it should be clarified, and the petition regarding payment of court fee should be complied with properly and again granted seven days' time for compliance; and that the plaintiff took the returned plaint and re-presented it on 26.03.2013 with the following endorsement :

“The plaint was returned directing the plaintiffs to file the copy of order in IA.No.3032/12 dated : 9-10-2012, on 7-11-2012 accordingly the plaintiffs filed C.A.No.9535/2012 and the same was delivered on 4-3-2013. Subsequently, the plaintiffs were informed by their lawyer, but due to illness of the plaintiff No.1, the plaintiffs did not approach their lawyer till 24-3-2013, as such there is a delay of 116 days in representing of the plaint.

The objection dated : 3-11-2012 is clarified herein under. Since the value of the suit properties is at Rs.95,59,000/- and the same is divided into three shares whereas the plaintiffs are entitled $1/3^{\text{rd}}$. The total value of $1/3^{\text{rd}}$ share is works out at Rs.31,86,333.30. The $3/4^{\text{th}}$ jurisdictional value on the $1/3^{\text{rd}}$ share of the plaintiffs is at Rs.28,39,750/-, as such this court is having jurisdiction. Therefore the plaintiffs pray that, this Hon’ble Court may be pleased to assign the number to the plaint, as it is expedient in the interest of justice.”

7. It also recorded that along with the re-presentation of plaint on 26.03.2013, the respondent Nos.1 to 4 also filed application for condonation of delay in re-presenting the plaint; it was again returned on 02.04.2013 stating that application for condonation of delay is not attached, and returned it by granting seven more days’ time; the application for condonation of delay was subsequently filed on 03.04.2013 and numbered as IA.No.1324 of 2013; the said IA was allowed on 15.04.2013; again the office returned the plaint on 23.04.2013, giving seven days’ time to pay the deficit Court Fee; on 12.06.2013, counsel for plaintiff re-presented it stating that deficit Court Fee of Rs.200/- is paid; to condone the delay in payment of the

deficit Court Fee, an application IA.No.1827 of 2013 was also filed; the said IA.No.1827 of 2013 was allowed on 17.06.2013; and thereafter, the plaint was numbered as OS.No.61 of 2013 on 21.06.2013.

8. Having recorded the above facts, the District court held that objections raised by petitioner would not fall within the purview of Order VII Rule 11 CPC, since respondent Nos.1 to 4 have paid the Court Fee, and sought condonation of delay for non-payment of Court Fee, and the court had condoned the said delay in payment of Court Fee, the plaint cannot be rejected. It held that the court can condone the delay in re-presenting the plaint and there was no necessity to give any notice on those applications to petitioner; petitioner had also not questioned the said orders before any court; the issue of condonation of delay in re-presenting the plaint is between plaintiffs and court, and petitioner has no *locus standi* to complain unless the court feels otherwise; and the said application was engineered only to delay the disposal of suit; and no prejudice has been caused to petitioner or to other defendants.

9. Questioning the same, this Revision is filed.

10. The learned counsel for petitioner relied on Order VII Rule 11 CPC and contended that respondent Nos.1 to 4 had in fact not complied with the direction contained in the order dt.09.10.2012 in IA.No.3032 of 2012 in

OS.No.196 of 2007 of the Senior Civil Judge, Kadapa to re-present the plaint within three days; that abnormal delay in payment of Court Fee has caused prejudice to petitioner; and therefore, the said application ought to have been allowed under Order VII Rule 11 (b) and (c) CPC.

11. The court below on verification of record had noted that the plaint was re-presented before the Court of Principal District Judge, Kadapa on 11.10.2012 which is within three days from 09.10.2012, the date on which IA.No.3032 of 2012 in OS.No.196 of 2007 was allowed. So there was no delay in representing the plaint in the court of Principal District Judge. Therefore, this contention of petitioner cannot be accepted.

12. No doubt, there was initially presentation of plaint by plaintiffs in the court of the Senior Civil Judge, Kadapa mentioning incorrect valuation and not paying court fee on the valuation, as asserted by petitioner. Thereafter, when this was pointed out by petitioner, the respondent Nos.1 to 4 did not object to it and their plea was upheld in IA.No.3032 of 2012 and the plaint was returned. Subsequently, when the plaint was re-presented by them there was deficit in the court fee paid and correct court fee was paid on 12.06.2013 and the plaint was numbered on 21.06.2013 as OS.No.61 of 2013. Merely because while re-presenting the plaint proper court fee was not paid, the

plaint cannot be rejected. Once the valuation pointed out by petitioner is accepted by the court below as well as respondent Nos.1 to 4/plaintiffs, the plaint was taken back from Senior Civil Judge, Kadapa and then re-presented in the court having correct pecuniary jurisdiction, i.e., Principal District Judge, Kadapa and proper court fee is paid, the same cannot be found fault with. It is not the contention of petitioner that on the date when the correct court fee was paid on the plaint, ie., on 12.06.2013, the suit is barred by limitation.

13. It is settled law that when a plaint is returned by the court on any of the grounds mentioned in Order VII Rule 10 CPC, when the plaint is again presented to the proper court having jurisdiction, it has to be taken as a presentation of a fresh plaint.

14. In **N. Tyagaraju v. S. Narayana Swamy**^[1], this Court after considering the relevant case law held that it is open to plaintiffs to add additional pleadings or delete or modify them and also seek same or different reliefs in the plaint being presented. Such a plaint would have to be construed as a fresh plaint only and not as a plaint which was already presented previously before another court. It held :

“102. Secondly, it also held that the plaintiff tampered the plaint by inserting page 9, para 11 with a new plea on the aspect of cancellation of Ex. A. 2 and the notice of D-3 to PW. 1, by tampering the Court record. Admittedly, the plaint

was presented on 11-06-1975. Ex. B. 29 is said to be the original plaint. It was returned on 16-06-1975. It was represented on 23-06-1975. It was again returned on 24-06-1975. The plaintiff represented it on 14-07-1975. On 23-07-1975, the plaint was registered. The plaintiff denied that after filing the suit, he meddled with the plaint and introduced page 9 which was not there earlier. He also denied the suggestion that by virtue of his official position as a Sheristadar of the District Court, he did so. Although the counsel for the plaintiff in the trial Court contended that it was done prior to numbering of the plaint by the trial Court and there was no necessity for leave of the Court or filing of any application for amendment at that stage, the Court below erroneously rejected it. In my opinion, when the plaint is returned by the trial Court before the plaint is registered by it, there is no bar for the plaintiff to add any new details which were not there in the earlier version and represent it to the Court. At best the new plaint has to be treated as a fresh plaint and not a continuation of the earlier plaint. This is because the plaint is the pleading of the plaintiff and it is the right of the plaintiff to state therein whatever he wishes to, in support of his case. If there is a change in the new version from the earlier version before the registration of the plaint by the trial Court, it cannot be said that there is a tampering of the plaint. Any amendment to the plaint, before its registration by the trial Court, does not require any leave of the Court or any application for amendment of plaint under Order VI Rule [17](#) of C.P.C. because notice of the plaint (as amended) would be sent to the defendants and no prejudice at that stage is caused to the defendants. A similar view was expressed in *Hanumanthappa and another v. Chandrasekharappa and others* : ILR 1996 KANT 3628, where a single judge of Karnataka High court held that there is no bar for a plaintiff to make changes in a plaint after it is returned by the court not having jurisdiction and before it is presented to the proper court. It held:

6. ... Representation of plaint by the plaintiff in proper Court, in effect, is to bring an action against the defendants on the basis of the cause complained against him. In other words it means regular institution and commencement of suit against defendants. The suit against a defendant

commences on presentation of plaint by the plaintiff before the proper Court, i.e. the Court having jurisdiction to entertain and try the suit.

7. Therefore, in the eye of law filing of the plaint before the Court which has no jurisdiction to entertain the same is no commencement of any legal action against the defendants. As such, presentation of plaint before incompetent Court cannot be construed and treated as continuation of the suit proceeding from that Court to the proper Court in which the plaint is re-presented. And such being the legal position, there cannot be any valid reason why the plaintiff cannot alter or change his plaint which is returned by the Court without jurisdiction, before it is presented to proper Court, subject of course to the law of limitation, proper valuation of the suit and payment of requisite Court fee on the plaint...

(emphasis mine)

15. It is therefore not necessary for plaintiffs to seek permission of the Principal District Judge to add or delete or modify the contents of the plaint prior to its presentation in the court of Principal District Judge. I am also of the opinion that the grounds raised in the IA.No.2659 of 2014 by petitioner do not fall within scope of Order VII Rule 11 C.P.C. I am also of the opinion that no notice need be issued to petitioner before numbering of the plaint by the District Court and he cannot insist for a notice in the application filed by respondent nos.1 to 4 seeking condonation of delay in payment of court fee or in representing the plaint for it is between the court and the respondent nos.1 to 4/plaintiffs.

16. Therefore, in my considered opinion, the court

below had rightly rejected the application filed by petitioner for rejection of plaint on the grounds raised therein. I see no error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of its power under Article 227 of the Constitution of India. Therefore, the Civil Revision Petition is dismissed. No order as to costs.

17. It is open to the counsel for petitioner to raise the contention before the Court below that the evidence already recorded when the matter was pending before the Senior Civil Judge, Kadapa cannot be taken into consideration and that *de novo* trial is to be conducted; and if such objection is taken, the court below will consider the same in accordance with law.

18. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-02-2015
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