

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.2508 of 2010

ORDER:

This Revision petition is filed challenging the order dt.15.04.2010 in I.A.No.714 of 2010 in A.S.No.152 of 2009 of the District Judge, Guntur.

The petitioner herein is the plaintiff in O.S.No.52 of 2008 before the Senior Civil Judge, Guntur. He filed the said suit seeking specific performance of an agreement of sale dt.17.01.2005 against the respondents/defendants. The suit was dismissed on 31.12.2008.

Challenging the same, the petitioner filed A.S.No.152 of 2009 before the District Judge, Guntur. In the appeal, he filed I.A.No.714 of 2010 under Order VI Rule 17 of the C.P.C. seeking to amend the plaint by claiming alternative relief of refund of the advance sale consideration of Rs.1,00,000/- together with interest at 12% per annum in the prayer portion of the plaint.

In the affidavit filed in support of I.A.No.714 of 2010, the petitioner contended that the respondents had received a sum of Rs.1,00,000/- from the petitioner towards advance sale consideration and had executed a registered agreement of sale dt.17.01.2005 in favour of the petitioner in respect of the plaint schedule property. It is contended that as per the agreement of sale, balance sale consideration of Rs.30,500/- was agreed to be paid

within a year and on such payment, the respondents agreed to execute a regular and proper registered sale deed in favour of the petitioner. He claimed that in spite of the fact that he expressed his readiness and willingness to obtain a regular sale deed after paying balance sale consideration within the stipulated period, the respondents have avoided to perform their part of contract. He also contended that at the time of filing of the suit, alternative relief for refund was not sought in the prayer portion of the plaint by mistake and inadvertence on the part of his counsel, and therefore, he filed this application to amend the plaint.

Counter-affidavit was filed by the respondents opposing this application contending that this application cannot be maintained at the appellate stage. The respondent placed reliance on the proviso to Order VI Rule 17 C.P.C. which bars amendment to pleadings after the trial has commenced, unless the party seeking amendment satisfies the Court that in spite of due diligence, he could not raise the plea before commencement of trial.

By order dt.15.04.2010 the appellate Court dismissed I.A.No.714 of 2010. It held that although Section 22 of the Specific Relief Act, 1963, permits the plaintiff to amend the plaint seeking alternative relief of refund of earnest money, in view of the amended provisions contained in the Code of Civil Procedure, 1908

in 2002 the alternative relief of refund of earnest money cannot be allowed after commencement of trial. It further held that the relief of recovery of amount is also barred by limitation.

Challenging the same, this Revision is filed.

It is pertinent to note Section 22 of the Specific Relief Act, 1963 as well as Order VI Rule 17 of C.P.C.

Section 22 of the Specific Relief Act, 1963 reads as under:

“Power to grant relief for possession, partition, refund of earnest money, etc.—

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 1[made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

Order VI Rule 17 C.P.C. is thus as under:

“17. Amendment of pleadings *he 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.”

Section 22 of the Specific Relief Act begins with a non-obstante clause and it states that notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, the alternative relief of refund of earnest money can be sought at any stage of the proceedings. The Court below has not noticed this non-obstante clause and it gave importance to the proviso to Order VI Rule 17 C.P.C. In my opinion, Section 22 of the Specific Relief Act overrides the proviso to Order VI Rule 17 C.P.C.

I am also of opinion that allowing the amendment of plaint would not alter the character of suit.

As regards the finding of trial Court that the relief of refund claimed by the petitioner, is barred by limitation, I am of the opinion that the Court below ought not to have gone into the issue at the stage when it is deciding whether or not to allow the amendment. The consideration of such an issue would thus be premature.

For these reasons, I am of the opinion that the impugned order cannot be sustained. Therefore, it has to be set aside.

Accordingly, the Civil Revision Petition is allowed and consequently I.A.No.714 of 2010 in A.S.No.152 of 2009 of the District Judge, Guntur, is allowed. No costs.

Miscellaneous Petitions pending, if any, shall stand

closed.

M.S. RAMACHANDRA RAO, J

11th June 2015

mar