

***THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

+ CIVIL REVISION PETITION No. 1299 OF 2015

% Dated: 25.06.2015

BETWEEN

P. Prakash, S/o Late P. Malliah

.... Petitioner/petitioner

And

1. Poosa Muthyalu, S/o late P. Malliah and 12 others

... Respondents

! Counsel for the Petitioner : Sri Ranga Rao Nellutla

^Counsel for the Respondents 11 to 13 : Sri D. Gnaneswara Naidu

<Gist:

>Head Note:

? Citations:

1. AIR 1967 SC 96
2. (2000) 1 SCC 712
3. (2009) 10 SCC 84

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION NO.1299 OF 2015

ORDER:

This revision is preferred calling in question the legality of the order passed on 20.12.2014 in I.A.No.781 of 2014 in O.S.No.26 of 2006, by the XI Additional District Judge, Ranga Reddy District, dismissing the said petition.

The petitioner herein is the plaintiff in the suit filed for partition and separate possession of the suit 'A' schedule land admeasuring Ac.12.08 guntas lying in Sy.No.258 of Manikonda Village, Rajendranagar Mandal,

Ranga Reddy District. The suit was initially filed impleading thereto six defendants. Thereafter, Sri P. Krishna and two others got impleaded as defendants. I.A.No.505 of 2012 filed by them for impleadment was in fact dismissed on 17.02.2014. Against the order of dismissal, Sri P. Krishna and two others carried the matter by way of revision to this Court in C.R.P.No.335 of 2014 which was allowed by this Court impleading them as defendants 11 to 13, as in the meantime Smt. P. Sobha Rani and others filed I.A.No.291 of 2014 to implead them as defendants and that I.A. was allowed on 18.07.2014 impleading them as defendants 7 to 10 in the suit.

It is the case of the petitioner herein that the defendants 11 to 13 filed their written statement on 17.10.2014 bringing out therein that they purchased land of an extent of Ac.6-04 guntas in Sy.No.258 of Manikonda Village out of Ac.12-08 guntas, the suit 'A' schedule land. It is the case of the petitioner that, only from the contents of this written statement, he had come to know of the said sale transaction and the purchase of land of Ac.6.04 guntas by the defendants 11 to 13. Neither the 6th defendant, nor the defendants 11 to 13 enclosed any such sale deed to the written statement filed by them respectively. Hence, the petitioner moved I.A.No.781 of 2014 under Order VI Rule 17 C.P.C, seeking amendment of pleadings for declaring the alleged sale deeds as null and void and not binding on the petitioner. That amendment application has been resisted by defendants 11 to 13 in the suit on various grounds. It is principally contended that the nature of the suit gets completely altered and that an independent suit for declaration of the sale deeds as null and void is barred by limitation by 12.11.2014, the date on which the amendment application is moved. The learned XI Additional District Judge, Ranga Reddy by his order dated 20.12.2014 dismissed the interlocutory application. Hence, this revision.

Heard Sri N. Ranga Rao, learned counsel for the petitioner/plaintiff and Sri D. Gnaneshwar Naidu for the respondents/defendants 11 to 13.

It is appropriate to notice that the petitioner has proposed to insert the following two paragraphs in the body of the plaint as paragraphs 12-A and 12-B and the following two prayers:

“12A. That the alleged sale deed bearing Doc.No.761/1969 dated 17-12-1969 to be executed by Defendant No.1 in favour of father of Defendants 11 to 13 for an extent of Ac.6-04 gts out of Ac.12-08 guntas in Sy.No.258, situated at Manikonda Village, Rajendranagar Mandal, Ranga Reddy district to be declared as null and void and not binding on the plaintiff.

“12B. That the another alleged registered Sale deed Doc.No.5851/99 dated 01-09-1999 said to be executed by Defendant No.1 & 3 in favour of Defendant No.6 for an extent of Ac.1-00 gts Sy.No.258, situated at Manikonda Village, Rajendranagar Mandal, Ranga Reddy district to be declared as null and void and not binding on the plaintiff.

Prayers:

“a-1). To declare the registered sale deed bearing Doc.No.761/1969 dated 17-12-1969 said to be executed by Defendant No.1 in favour of father of Defendants 11 to 13 for an extent of Ac.6-04 gts out of Ac.12-08 guntas in Sy.No.258, situated at Manikonda Village, Rajendranagar Mandal, Ranga Reddy district to be declared as null and void and not binding on the plaintiff.

“a-2). To declare the registered Sale deed Doc.No.5851/99 dated 01-09-1999 said to be executed by Defendant No.1 & 3 in favour of Defendant No.6 for an extent of Ac.1-00 gts Sy.No.258, situated at Manikonda Village, Rajendranagar Mandal, Ranga Reddy district to be declared as null and void and not binding on the plaintiff.

Learned counsel Sri N. Ranga Rao would submit that when the suit is filed for partition and separate possession in respect of the suit schedule property, comprising of Ac.12-08 guntas of land situate in Sy.No.258 of

Manikonda Village and the present relief sought for is only a declaration that the alleged sale deed therein Document No.761/1969 dated 17.12.1969 executed by the first defendant in favour of the father of the defendants 11 to 13 as null and void and not binding on the plaintiff. The other alleged sale deed bearing Document No.5851/1999 dated 01.09.1999 said to have been executed by defendants 1 & 2 in favour of the sixth defendant covering an extent of Ac.1-00 in Sy.No.258 of Manikonda Village is also null and void and hence, the nature of the suit is not altered in any manner. Learned counsel for the respondents 11 to 13 would urge that a registered sale deed executed as long back as on 17.12.1969 is sought to be declared now as null and void and the application has been moved nearly 45 years thereafter. Similarly, the sale deed bearing Document No.5851/1999 is sought to be nullified after 15 years time has lapsed. Learned counsel for the respondents would also urge that the sixth defendant has filed a written statement on 21.08.2008 bringing out that a registered sale deed is executed by Poosa Gandaiah and four others in favour of the sixth defendant on 23.08.1999 bearing Document No.5695/1999. The sixth defendant has also referred to another sale deed executed by P. Gnaneshwar and Mutyalu in favour of the sixth defendant bearing Document No.5851/1999. The sixth defendant has further asserted that upon becoming the absolute owner of the land covered by the sale deeds referred to therein, he obtained lay out and executed registered sale deeds in favour of several purchasers, details regarding mutations of which have also been furnished. Thus, it is contended that from August, 2008 onwards, the plaintiff/petitioner is in the know of the sale transactions of land, which is the subject matter of the suit. However, he has not taken any steps either to implead the purchasers or to challenge any such sale transactions. The present application is therefore, a hopelessly belated exercise and it alters the nature of the suit completely.

It is true that the Court may at any stage of the proceedings allow either

party to alter or amend the pleadings in such manner and all such amendments shall be made as may be necessary for purposes of determining the real question involved between the parties. It is equally true, that a very liberal approach is to be adopted in matters relating to the amendment of the pleadings, so long as the period of limitation provided has not expired, adversely affecting the accrued rights of others. The principal object in allowing the amendments is to facilitate the Court to decide the rights of the parties in a comprehensive manner. But however, no amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time. The relevant principles in this regard have been crystallized by Sarkar, J in ***A.K. Gupta & Songs Limited v.***

Damodar Vally Corporation^[1] in the following words:

7. It is not in dispute that at the date of the application for amendment, a suit for a money claim under the contract was barred. The general rule no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neale* (1887) 19 QBD 394. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than, a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: see *Charan Das v. Amir Khan* 47 Ind App 255: AIR 1921 PC 50 and *L.J. Leach and Company Ltd v. Jardine Skinner and Company*: 1957 SCR 438 : AIR 1957 SC 357.

8. The principal reasons that have led to the rule last mentioned are first, that the object of Courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (*Cropper v. Smith* (1884) 26 Ch D 700 (710-711) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended *Kisandas Rupchand v. Rachappa Vithoba* ILR (1909) 33 Bom 644 at 651, approved in *Pirgonda Hongonda*

Patil v. Kalgonda Shidgonda: 1957 SCR 595 (603) : AIR 1957 SC 363 at p.366.

9. The expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the Plaintiff to succeed" as was said in Cooke v. Gill (1873) 8 CP 107 (116), in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Ltd. 19622 All ER 24, and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words "new case' have been understood to mean "new set of ideas": Dornan v. J.W. Ellis and Company Ltd. 1962 1 All ER 303. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

Again in ***B.K. Narayana Pillai vs. Parameswaran Pillai and another***^[2], the relevant principle is spelt out as under:

The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendments of the written statement as the question of prejudice is less likely to operate in that event. The Defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favor of the Plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided that proposed amendment does not alter or substitute a new cause of action on the basis of which the original lies was raised or defense taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings.

Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filling the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.

After exhaustively considering the subject, the Justice Dalveer Bhandari speaking for the Court in ***Revajeetu Builders and Developers vs. Narayanaswamy and Sons and ors***^[3] has culled out the relevant principles in paragraphs 67 of the judgment which are as under:

- “(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is *bona fide* or *mala fide*?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

When we apply these legal principles to the present fact scenario, it clearly emerges that, in a suit for partition, the plaintiff as well as the defendants have similar rights in the suit schedule properties. But however, the cause relating to declaration of a sale deed as null and void is entirely a different cause of action. This apart, in the intended paragraph 12-A what the

petitioner/plaintiff is seeking is to declare a sale deed which is registered as on 17.12.1969 as null and void and not binding on the plaintiff. By the time I.A.No.781/2014 is moved on 12.08.2014 nearly 45 years time has elapsed from the date of that sale transaction. By no stretch of imagination, the rights that have accrued and crystallized in favour of a purchaser of such a sale deed cannot be annulled after such lapse of time. Similarly, in paragraph 12-B, what the plaintiff intended was to annul a sale deed executed and registered on 01.09.1999, after 15 years time has elapsed by. Therefore, the principle no.6 culled out in **Revajeetu Builder's case** and **B.K. Narayana Pillai's** case is clearly attracted to the present case. The present relief which the petitioner/plaintiff seeks to claim is based upon a totally different cause of action and a new set of facts which have no commonality with those pleaded in the original plaint are sought to be introduced. I have, therefore, no hesitation in my mind to hold that the present application seeking amendment alters the entire nature of the case and pleadings set up in the original plaint.

I, therefore, do not find any legal infirmity in the order passed dismissing the amendment application and hence, this revision is dismissed, but however, without costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

25.06.2015
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[\[1\]](#) AIR 1967 SC 96

[\[2\]](#) (2000) 1 SCC 712

[\[3\]](#) (2009) 10 SCC 84