

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

+ CIVIL REVISION PETITION No.3044 of 2015

% 09-10-2015

Kasula Surender Reddy and anotherPetitioners

And

\$ M. Ravinder Reddy and 11 others Respondents

! Counsel for the Petitioners : Sri O. Manohar Reddy

^ Counsel for the Respondents : Sri K. Raghuv eer Reddy

<Gist :

>Head Note:

? Cases referred:

1. (2009) 2 SCC 409
2. (2005) 13 SCC 89
3. AIR 2008 SC 1147
4. 2009 (10) SCC 84
5. (1884) 29 Ch. D 700
6. (1878) 10 Ch. D 393

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION No.3044 of 2015

ORDER:

This revision is preferred by respondent Nos.3 and 4 in I.A.No.497 of 2015 moved in O.S.No.305 of 2005 on the file of the Principal District Judge, Ranga Reddy District.

Respondent Nos.1 to 4, who are the plaintiffs in the suit have moved I.A.No.497 of 2015 under Order VI Rule 17 C.P.C. for amending the plaint by mentioning land in survey No.172 (Ac.6-10 gts), 174 (Ac.3-20 gts) situate at Mohammed Nagar Village and survey No.505 (RU) (Ac.3-00 gts) and survey No.507/EE (Ac..3-10 gts) situate at Kandukur Village instead of lands in survey Nos.172, 174, 505/RU and 507/NA situate at Mohammed Nagar Village. That application was allowed. Hence, the present revision.

O.S.No.305 of 2005 is filed by respondent Nos.1 to 4 herein for specific performance of agreement of sale dated 22.03.2002 by directing the defendants to execute and register the sale deed conveying the suit schedule property in favour of the plaintiffs and to deliver possession of the same and in default the Court may perform the said acts. The suit schedule property has been described as all that land admeasuring Ac.16.00 guntas covered by survey Nos.172, 174, 505/RU and 507/NA of Mohammed Nagar Village, Kandukuru Mandal, Ranga Reddy District. As per the averments of the plaint, the 1st defendant who is the exclusive owner of certain parcels of immovable property, comprising of land admeasuring Ac.10-20 guntas out of survey Nos.172, 174, 505/RU and 507/NA by virtue of patta Nos.1, 601 and 523 and the 2nd defendant, who is none other than the wife of the 1st defendant in the suit, is the exclusive owner of land admeasuring Ac.5-20 guntas in survey No.507/NA and 172 by virtue of patta Nos.210 and 1011 issued by MRO, Kandukuru Mandal, Ranga Reddy District, have jointly offered to sell the said total extent of Ac.16.00 guntas for a sale consideration of Rs.24,00,000/- and accordingly, an agreement of sale was executed on 22.03.2002 by defendant Nos.1 and 2 in favour of the plaintiffs. It is also the case of the plaintiffs that a sum of Rs.5,11,000/- has been paid towards part of the sale consideration. But, however, on the ground that defendant Nos.1 and 2 are not performing their part of the contract, the suit was instituted for specific performance. The petitioners herein are defendant Nos.3 and 4 to the said suit. They asserted that they have purchased the entire land of Ac.16.00 guntas from defendant Nos.1 and 2, no doubt subsequent to 22.03.2002. In their

written statement, they have raised an objection with regard to the description of the plaint schedule property apart from raising various other contentions about the merits of the matter. In Para 2 of the written statement filed by them they have clearly stated that lands in survey No.505 and 507 are not situated in Mohammed Nagar Village and they are in fact situate in Kandukuru Village and therefore, the description of plaint schedule property as if the entire land was lying in Mohammed Nagar Village is wrong. This written statement appears to have been filed somewhere in April 2006. In spite of the same, no steps have been taken by the plaintiffs to get the suit schedule property amended accordingly.

It is now contended by Sri O.Manohar Reddy, learned counsel for the petitioners that on behalf of the plaintiffs, 4 witnesses have been examined and on the side of the defendants, 2 witnesses were examined already and one of them is examined on behalf of defendant Nos.3 and 4 in the suit. At that stage, the present interlocutory application No.497 of 2015 is filed for amending the suit schedule. That application is allowed erroneously by the learned trial Court. It is a belated application and hence, it ought to have been dismissed.

It is contended by Sri O.Manohar Reddy, learned counsel for the petitioners that Order VI Rule 17 CPC has been amended suitably and it was reintroduced by the amending Act No.22/2002, which was brought into force with effect from 01.07.2002. while reintroducing Rule 17, this time around however care was taken to introduce a proviso thereto which spells out, 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. It is, therefore, contended by the learned counsel for the petitioners that unless the Court comes to a conclusion that in spite of due diligence the plaintiffs in this suit could not have amended the plaint schedule, the present application could not have been ordered as the trial has already commenced, and 4 witnesses are already examined on behalf of the plaintiffs and 2 witnesses were also examined on behalf of the defendants in the suit. Therefore, at this stage, amending the suit schedule even without recording a finding that the plaintiffs were diligent enough in the matter amounts to improper exercise of power available with the trial Court. The learned counsel for the petitioners placed reliance in support of the above plea upon the judgment rendered by the Supreme Court in **Vidyabai and others Vs. Padmalatha and another.**

Per contra, Sri K. Raghuveer Reddy, learned counsel for the plaintiffs/respondents would submit that the amendment that is sought to be made is a very innocuous one, the complexion of the suit is not sought to be altered or changed. Defendant Nos.1 and 2, the wife and husband, owned a total extent of land Ac.16.00 guntas, they represented the survey numbers in which the said land was lying and the entire extent of land possessed by them was agreed to be purchased by the plaintiffs, for which purpose an agreement of sale was entered into on 22.03.2002. When they failed to live up to the obligations arising therefrom, the suit for specific performance has been filed. Now, the amendment sought to be introduced to plaint schedule is a mere correction of an error. In stead of noticing Mohammed Nagar Village, Kandukuru Mandal, Ranga Reddy District, the plaint schedule is sought to be specified more precisely by indicating which extent of land lying in which survey numbers is falling under Mohammed Nagar Village, and the land in which survey numbers is falling under Kandukuru Vilage. Except that no substantial amendment is sought to be made. This amendment is only sought to be made for purpose of avoiding any future complications that might arise at the time of executing or giving effect to the decree that is likely to be passed in the suit. No prejudice is going to be caused to the case of the defendants in general and defendant Nos.3 and 4, the petitioners in this revision mere specifically. The learned counsel for the respondents has relied upon the judgment rendered in **Sajjan Kumar Vs. Ram Kishan** and **Usha Devi Vs. Rijwan Ahmad and others**.

In view of the rival submissions, the question that is required to be considered is whether the trial Court is right and justified in allowing the amendment at this stage of the proceedings after the trial has commenced.

It is true that a liberal approach is required to be adopted whenever the pleadings set up by the parties are sought to be amended so long as no prejudice and no rights of the opposite parties are going to be impaired in the process. In Sajjan Kumar's case (Supra 2) a three Judge Bench of the Supreme Court has noticed that the prayer for amendment in that case was opposed by the defendant/respondent in as much as he had taken a plea in the written statement itself that the suit premises was not correctly described, but yet, the plaintiff/appellant in that case proceeded with the trial of the suit and did not take care to seek the amendment at an early stage. In such a fact situation while allowing the appeal of the plaintiff, this is how the principle has been spelt out by the Supreme Court in

Para 5 of the judgment:

“Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit.”

In Usha Devi's case (Supra 3) a two Judge Bench of the Supreme Court after noticing the earlier judgments of the Supreme Court in Baldev Singh and Ors. v. Manohar Singh and Anr. (2006 (6) SCC 498), Ajendraprasadji N. Pandey and Anr. V. Swami Keshavaprakeshdasji N. and Ors. (2006 (12) SCC 1) and Kailash v. Nanhku (2005 (4) SCC 480) and also Sajjan Kumar's case (Supra 2), allowed the amendment of the plaint averments. At this stage, it is only appropriate to notice the judgment of the Supreme Court in Vidyabai's case (Supra 1) relied upon by Sri O. Manohar Reddy, was rendered by a two Judge Bench of the Supreme Court, speaking through Justice S.B. Sinha, after noticing the earlier judgments of the Supreme Court in Ajendraprasadji's case (referred supra), Baldev Singh's case (referred supra), Rajesh Kumar Aggarwal v. K.K. Modi [(2006) 4 SCC 385] and Salem Advocates Bar Assn. v. Union of India [(2005) 6 SCC 344] and Kailash's case (referred supra) etc., posed the question as to whether the amendment of the pleadings can be allowed after the trial has commenced. In Para 10 after noticing the proviso to Rule 17 Order 6 CPC, it is held as under:

“It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefore are satisfied viz. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.”

According to the learned counsel for the petitioners since no specific finding is recorded by the trial Court that in spite of due diligence the plaintiffs could not have amended the plaint earlier, following the judgment in Vidyabai's case (Supra 1), application for amendment deserves to be thrown out.

It would be appropriate to notice that Vidyabai's case (Supra 1) has been decided by the Supreme Court on 12.12.2008 and subsequently on 09.10.2009

another two Judge Bench of the Supreme Court speaking through Justice Dalveer Bhandari in **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Others**, had traversed the entire gamut relating to amendment of the pleadings. In the course of the said judgment, Justice Dalveer Bhandari had noticed the basic principles behind grant or refusal of an amendment articulated more than 125 years ago in **Cropper v. Smith**, where Brown, L.J. has brought out the relevant principle in the following words:

"It is a well established principle that the object of the courts is to decide the rights of the parties and not punish them for mistakes they make in the conduct in their cases by deciding otherwise than in accordance with their rights ... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct if it can be done without injustice to the other party. Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace ... it seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right."

Even an earlier judgment of the Court of appeal rendered in **Tildersley v. Harper** was also referred to therein.

What emerges from the above legal principle is that the object of the Court is to decide the rights of the parties and not to punish them for the mistakes they made in the conduct of their cases by deciding otherwise than in accordance with their rights. The philosophy of the Indian courts is no different. That is the reason why Justice Dalveer Bhandari has noticed the various essential principles and crystallized them in Para 67 of the judgment in Revajeetu Builders case (Supra 4):

The 1st principle is whether the amendment sought for is imperative for proper and effective adjudication of the case and the 3rd principle culled out was that the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money and the 4th principle is refusing amendment would in fact lead to injustice or lead to multiple litigation.

It is true in Vidyabai's case (Supra 1) the Supreme Court has held that the language employed in the proviso to Rule 17 of Order VI CPC is couched in mandatory terms and that it does not leave much discretion in the hands of the

Court. But, however, unfortunately the judgment of the Supreme Court in Sajjan Kumar's case (Supra 2) which was rendered by three Judge Bench of the Supreme Court has not been noticed by the Supreme Court while deciding Vidyabai's case (Supra 1) and now going by the subsequent judgment of the Supreme Court in Revajeetu Builders's case (Supra 4) the amendment now proposed to be carried out to the plaint schedule is more in the nature of rectification of an error. 4 different survey numbers are mentioned in the plaint schedule and thereafter Mohammed Nagar Village, Kandukuru Mandal, Ranga Reddy District is mentioned, whereas now it is proposed to amend the plaint schedule pointing out which survey numbers falls in Mohammed Nagar Village and which other survey numbers fall in Kandukuru Village. By such an amendment, neither the nature of the suit nor the principal averments in the plaint and or the issue at controversy was sought to be altered. It is true as pointed out by the learned counsel for the petitioners that the plaintiffs were not diligent enough in not noticing this mistake in spite of the written statement filed by defendant Nos.3 and 4 specifically in Para 2 itself, brought out clearly this error in the plaint schedule. But should the Court try to penalize for the mistake? It is true that the trial of the suit has commenced and obviously the plaintiffs have exhausted their side of collection of evidence and the turn of the defendants has come and even the defendants have also examined a couple of witnesses on their side. It is true the parties are required to lead evidence on the issues framed for adjudication and no amount of evidence collected otherwise can be looked into. Since the plaint averments are the ones which have offered the basis for settlement of issues between the parties, the amendment, in my opinion does not require any evidence to be led specifically or additionally by either of the parties. If, on the other hand, the amendment is not allowed, as pointed out in principle 4 culled out in Revajeetu Builders's case (Supra 4) it will lead to grave injustice to the plaintiffs and would also lead to further litigation unnecessarily, should the plaintiffs succeed in the present suit. This apart they will never be able to workout the decree even if it is passed in their favour as localization of the specific lands in both the villages would become really difficult. Therefore, a monitory compensation to defendant Nos.3 and 4, in my opinion would have met the ends of justice for the lapse committed by the plaintiffs in not being very diligent in seeking amendment of plaint schedule much in time at any rate prior to trial having commenced. In my opinion, the proviso to Rule 17 Order VI CPC has still left discretion in the hands of the Courts to allow such an amendment in as much as no bar in absolute terms for allowing any such

application for amendment is contained therein. On the other hand, it is left to the discretion of the Court to allow any such application after the commencement of trial provided the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter in time prior to the commencement of trial. This later half of the proviso, in my opinion, has to be understood in the context of the principles enunciated by the Supreme Court in Revajeetu's case (Supra 4). Viewed in this backdrop, the necessary exercise will have to be regulated accordingly.

I, therefore, do not find any justification to set aside the order passed by the Principle District Judge, Ranga Reddy District in I.A.No.497 of 2015 in O.S.No.305 of 2005. But, however, the order stands modified to the extent that the plaintiffs shall be directed to compensate the defendant Nos.3 and 4 of the suit by making a payment of Rs.5,000/- towards costs for allowing the amendment in I.A.No.497 of 2015 and such costs will be appropriately modulated while passing the final judgment in the case.

With this, the civil revision petition stands dismissed.

Consequently, miscellaneous petitions, if any, pending shall also stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

09.10.2015

Note: L.R. Copy to be marked

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