

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.2883 of 2011

ORDER:

This Revision Petition is filed by the petitioners challenging the Order dt.30-05-2011 in I.A.No.525 of 2009 in A.S.No.125 of 2007 of the I Additional District Judge, Kadapa, Kadapa District.

2. The petitioners herein are the plaintiffs in O.S.No.198 of 2003 on the file of the Senior Civil Judge, Kadapa. They filed the said suit for partition of the plaint schedule properties and for separate possession of their 1/3rd share in the plaint schedule property and for costs. In the said suit, respondent Nos.1 to 4 are defendants. The 1st respondent is the 2nd defendant, 2nd respondent is 1st defendant and respondent Nos.3 and 4 are defendant Nos.3 and 4.
3. Written Statement was filed by 2nd defendant/1st respondent herein opposing the grant of relief of partition. Issues were framed. Trial commenced and concluded.
4. Thereafter, by judgment dt.17-09-2007, the learned Senior Civil Judge, Kadapa decreed the suit with costs holding that the plaintiffs are entitled to 1/6th share each (1/3rd share together) in the plaint schedule property and directed that the said shares to be separated.
5. Questioning the said judgment, A.S.No.125 of 2007 was filed by 1st respondent herein before the I Additional District Judge, Kadapa. While the said appeal was pending, two years later, 1st respondent/2nd defendant filed I.A.No.525 of 2009 under Order VI Rule 17 CPC seeking to amend the written

statement by adding certain paras to the written statement.

6. In the said application, it is stated that the earlier written statement had been filed when one Father Samson was in charge of Kadapa Diocese. He instructed the then advocate to draft the written statement on behalf of 2nd defendant, but certain defences on question of fact and law were not properly incorporated in the said written statement by a mistake. It is alleged that the said advocate on account of his old age, stopped his legal practice and thereafter, returned the case bundle to 1st respondent a few months back; that 1st respondent then engaged present advocate Sri K.Pulliah to conduct the appeal on their behalf; and therefore, on his advice, this application seeking amendment of the written statement was filed. It is further contended that the defences now raised in paras 5 and 6 are only further explanations made to the existing defences and no prejudice would be caused to the petitioners.
7. This application was opposed by the petitioners contending that the earlier written statement was drafted by the senior most advocate in Kadapa who was a retired District Judge and unfortunately he is being blamed for not properly drafting the earlier written statement to suit the convenience of 1st respondent; that the said advocate pleaded on legal aspects and argued the case at length and pleas now being raised were elaborately discussed in the judgment of the Court below. It is further contended that amendments to pleadings cannot be sought after the commencement of the trial except in very rare cases and even then there should be proper explanation for the delay in seeking amendment. It was further contended that 1st

respondent is intending to raise new pleas and this cannot be permitted. It is also contended that the entire trial is over and at this stage, 1st respondent is not entitled to amend the written statement.

8. By Order dt.30-05-2011, I.A.No.525 of 2009 in A.S.No.125 of 2007 was allowed. The Court below held that applications for amendment of pleadings should be liberally granted unless serious injustice or irreparable loss is caused to the other side and that the Court has wide power and unfettered discretion to allow amendment of the written statement at any stage of the pleadings. It is further held that the pleas taken in the proposed amendments in the written statement were already covered and discussed by the trial Court in its judgment according to the petitioners and even if some of the pleas are inconsistent pleas, the same can be taken in a written statement.
9. Challenging the same, this Revision Petition is filed.
10. Learned counsel for the petitioners contends that the impugned Order is erroneous and that the Court below has not followed the proviso to Order VI Rule 17 CPC which has been inserted by the CPC Amendment Act, 22 of 2002 with effect from 01-07-2002; that it is not the case of 1st respondent that it is seeking incorporation of events subsequent to the filing of the suit as new pleas; and except blaming the senior counsel who drafted the earlier written statement, 1st respondent had not proved that in spite of due diligence, the points now sought to be included in the amendment could not be raised before the commencement of trial.

11. Learned counsel for 1st respondent Sri J.Francis, on the other hand contended that the Order passed by the Court below is correct and did not warrant any interference by this Court.

12. The respondent Nos.3 and 4 are served, but there is no representation on their behalf. Although 2nd respondent is not served, since he is not a contesting party in this application, no prejudice would be caused to him, if the Revision Petition is decided without hearing him.

13. Order VI Rule 17 CPC states as under:

“Order VI Rule 17. Amendment of pleadings

The 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.”

14. The proviso has been inserted by the CPC Amendment Act 22 of 2002 with effect from 01-07-2002. It directs that no application for amendment of pleadings 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 commencement of trial.

15. The purpose of this amendment was explained in **J.Samuel and others Vs. Gattu Mahesh and others** to the effect that it is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps

checking the delays in filing the applications.

16. In the present case, application for amendment of the written statement has been filed by 1st respondent/D-2 not only after the trial has commenced but after the trial Court has decided the suit against 1st respondent/2nd defendant. Therefore, the bar imposed by the proviso to Order VI Rule 17 CPC operates unless 1st respondent had pleaded and proved that in spite of due diligence, it could not have raised the matter before the commencement of trial. Not only is there no such pleading but except blaming the earlier counsel who drafted the written statement on its behalf, nothing else is stated. So it cannot be said that 1st respondent had exhibited due diligence and it was disabled from raising the pleas now raised before the trial Court before the commencement of trial. It appears that the Court below has totally ignored the proviso to Order VI Rule 17 CPC and passed the impugned order.

17. A reading of the affidavit filed in support of amendment application also does not indicate that 1st respondent intended to introduce by way of amendment any events which are alleged to have occurred subsequent to the filing of the suit.

18. In this view of the matter, the impugned order cannot be sustained.

19. Accordingly, the Civil Revision Petition is allowed, and the impugned order dt.30-05-2011 in I.A.No.525 of 2009 in A.S.No.125 of 2007 is set aside. Since the appeal pending before the lower appellate Court is of the year 2007, the Court below shall endeavour to dispose of the appeal as expeditiously

as possible, preferably within a period of three months from the date of receipt of a copy of this order. No costs.

20. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-04-2015

kvr