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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

+ C.R.P. No. 1098 of 2014

% Dated 02.04.2015

Karibandi Suryakantham

....Petitioner

Vs.

\$ Pilla Venkatakrishna

....Respondent

! Counsel for the petitioner : Ms. T.V. Sridevi

^ Counsel for the Respondent : Sri Pushyam Kiran

<GIST:

> HEAD NOTE:

? Cases referred

1. 2014 (4) ALT 206
2. (2009) 10 SCC 84
3. 2006 (6) SCJ 305
4. 2008 (2) ALT 21 (SC)
5. 2007(2) SCJ 569
6. (2005) 13 SCC 89
7. (1884) 24 Ch D pg 700

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION No. 1098 OF 2014

ORDER:

This revision is preferred by the plaintiff in the suit calling in question the correctness of the orders passed by the learned I Additional Junior Civil Judge, Rajahmundry in I.A.No.341 of 2012, moved by her seeking amendment of the boundaries of the plaint schedule property. The respondent herein, who was the sole defendant, has opposed the said amendment, setting out that it would cause

grave irreparable injury to him and the suit being one for injunction, the very nature of the claim gets materially altered, if the amendment, as sought for, is allowed.

Since the amendment of the plaint sought for is at the trial stage, it is only appropriate for the Courts to adopt a very liberal approach. The petitioner herein, in paragraph 4 of the plaint, averred that her mother originally owned land of an extent of Ac.1.30 cents situate in R.S.No.796/5 of Rajendrapuram Village and there was no document of title available with her mother. However, it was further asserted that the mother of the plaintiff enjoyed the entire extent of Ac.1.30 cents of land during her lifetime and after her death, sometime 25 years back, the plaintiff being her only issue, succeeded to the entire extent of land of Ac.1.30 cents. Consequently, she was in exclusive possession and enjoyment of the entire Ac.1.30 cents of land. Next follows the following statement of fact:

“....The plaintiff sold an extent of Ac.0.50 cts. to the defendant under registered sale deed Dt.9.6-1993.”

In the said sale deed, it is clearly recited that out of Acs.1.30 cents of land, plaintiff is selling Ac.0.50 cents. The plaintiff, after selling Ac.0.50 cents, is in possession and enjoyment of Ac.0.80 cents by growing tobacco and maize with the assistance of her son. No taxes are being collected for the said lands. The said Acs.0.80 cents is the plaint schedule property. Thus, the plaintiff herself has admitted that she has sold Ac.0.50 cents of land to the defendant and conveyed the title to the said land through a registered sale deed, dated 09.06.1993. It is the case of the petitioner/plaintiff that by inadvertence, instead of mentioning the boundaries for Ac.0.80 cents of the remaining land, boundaries of Ac.0.50 cents of land, which was sold away, were mentioned in the plaint schedule. Since the defendant, in his written statement, has pointed out that the plaint schedule has reflected the land of Ac.0.50 cents purchased by him by way of registered sale deed, dated 09.06.1993, from the plaintiff, it has become necessary for the plaintiff/petitioner to consider amending the plaint schedule. Hence, I.A.No.341 of 2012 was moved seeking amendment of the plaint. Since the said Application was dismissed, the present revision is preferred.

Heard Ms. Sridevi, learned counsel for the petitioner and Sri Pushyam Kiran, learned counsel for the respondent/defendant.

Learned counsel for the petitioner has placed strong reliance upon the judgment rendered by this Court in **Allam Nagaraju v. Katta Jagan Mohan Reddy** and would urge that all pre-trial amendment Applications should be liberally allowed so as to enable the parties to lead appropriate evidence for resolution of controversies and when the trial is not yet commenced in a matter, no hardship or prejudice would be visited to the opposite parties when such an amendment is allowed.

Per contra, Sri Pushyam Kiran, learned counsel for the respondent has placed reliance upon the judgment rendered by the Supreme Court in **Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Ors.** It will be relevant to notice that at the stage of considering the Application moved under Order VI Rule 17 C.P.C, the intrinsic merit or the like of it in such an Application is hardly of any consideration of this Court and the Court must get guided by the well-settled principle that only if an irredeemable hardship or any other right of the opposite party gets forfeited in the process, such an Application can be rejected. It will be appropriate to notice that the Supreme Court in **Baldev Singh and others vs. Manohar Singh and another** clearly took the view that prayer for amendment of a pleading, at the trial stage, has to be dealt with liberally unless serious injustice or irreparable loss is likely to be caused in the process to the opposite side. It will be appropriate to notice that the Supreme Court has revisited the principles on the subject in **Revajeetu Builder's case**. It is also appropriate to notice that the Supreme Court in **Usha Devi vs. Rijwan Ahmed and others**, after noticing the principles enunciated by the Supreme Court in earlier rulings, including **Ajendraprasadji N. Pandey and another v. Swami Keshavprakeshdasji N. and others** and in **Sajjan Kumar vs. Ram Kishan**, has held that in order to allow the prayer for amendment, the merit behind the amendment is hardly a relevant consideration and it would be open to the defendants/respondents to raise their objections in regard to the amended plaint by making corresponding amendments in their written statements.

Now, it would be appropriate to notice the principles enunciated by the Supreme Court in **Revajeetu Builder's case**. The general principle that amendment of pleadings cannot be allowed so as to alter substantively the nature of the suit or substitute cause of action or the nature of the claim or counter-claim applies was reiterated. The Supreme Court, has noticed the leading English case of **Cropper vs.**

Smith setting out the object underlying the amendment of pleadings, spoken to by Brown Lord Justice in the following words:

"It is well established principle that the object of Courts is to decide the rights of the parties and not to punish them for mistakes they make in the conduct of 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 of 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."

Ultimately, the Supreme Court has noted the factors to be taken into consideration while dealing with the Applications for amendments and in paragraph 67 of the judgment; the following principles have been culled out:

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.

The first principle clearly spelt out was as to whether amendment sought for is imperative for proper and effective adjudication of the case, and similarly, it is also noted that refusing amendment would, in fact, lead to injustice or multiple litigation. The learned counsel for the petitioner Ms. T.V. Sridevi has urged that the plaint, in so many words, has specifically made out that the suit claim is confined to the remaining Ac.0.80 cents of land, but however, by inadvertence, the suit schedule boundaries have been mentioned wrongly with reference to the balance of Ac.0.50 cents of land, which was sold off by her in favour of the defendant. Therefore, if the

amendment now sought for is not granted, there will not be any effective or proper adjudication of the suit claim itself what with, the plaintiff admitting sale of Ac.0.50 cents of land. It therefore, follows that if the amendment is not granted, the suit is not capable of being properly adjudicated or decreed and thus, irreparable injury would occasion to the plaintiff.

Per contra, Sri Pushyam Kiran, learned counsel for the respondent, places strong reliance upon Principle No. 5 culled out by the Supreme Court in the above case, where it has been spelt out that if the amendment is allowed, if it fundamentally changes the nature and character of the case, no such measure should be allowed. The case of the defendant, all through, is that he has, no doubt, purchased Ac.0.50 cents of land from the plaintiff. The plaintiff, as was already noted supra, has admitted this position. It is also agreed on both sides that the suit schedule boundaries are exactly those of this Ac.0.50 cents of land. The suit claim is not concerning these Ac.0.50 cents of land, but it concerns the balance Ac.0.80 cents of land available. It is the further case of the defendant that this Ac.0.80 cents of land was also sold to him and the plaintiff has no land left as the entire extent of Ac.1.30 cents has been sold away by her or her predecessors-in-interest. Such an assertion is on the merits of the matter. If the defendant has purchased the entire extent of Ac.1.30 cents in two different parcels of Ac.0.50 cents and Ac.0.80 cents by separate documents, that is liable to be established by him in the suit. In fact, he has already taken such a plea in the written statement. Therefore, merits of the suit claim or merits behind the Application seeking amendment cannot be taken into account or consideration, at this stage.

However, one other principle, which must be borne in mind, was that the defendant must be in a position to be compensated by way of costs. Therefore, since I have come to the conclusion that if the amendment is not allowed, nothing remains in the suit itself for adjudication as the admitted position by the plaintiff was that she sold away Ac.0.50 cents of land to the defendant and the plaint schedule contains the boundaries of the said Ac.0.50 cents of land, for not taking adequate care while settling the pleadings, the respondent/defendant deserves to be compensated. Hence, I consider that ends of justice would be served by allowing the amendment sought for, though the defendant has taken the plea that he has purchased the balance Ac.0.80 cents of land also and hence, the suit itself is liable to be

dismissed. That question would be adjudicated in the main suit. The trial Court will frame a specific issue in that regard, if not already done and the defendant shall be allowed adequate opportunity for leading evidence considered appropriate by him in that regard. The plaintiff/petitioner is therefore, directed to deposit costs of Rs.3,000/- (Rupees three thousand only), to cover the costs of this Revision to the credit of the suit within 30 days from today. Upon such deposit, the trial Court will pass on these costs additionally to the party, whoever succeeds ultimately in the suit, apart from the adjudication of the costs in the suit by that Court. The Court below is directed to consider granting reasonable time to the defendant to file an additional written statement, if so desired.

With this, the Writ Civil Revision Petition stands disposed of. No costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

2nd April 2015

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