

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION Nos.2995 and 2993 of 2014

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COMMON ORDER:

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Since these Revisions arise out of the same suit between the same parties, they are being disposed of by this common order.

2. Heard Sri O.Udaya Kumar, learned counsel for petitioner in both the Revisions and Sri S.V.Muni Reddy, learned counsel for 1st respondent in both the Revisions.

3. The petitioner herein is 1st defendant in the suit O.S.No.462 of 2006 on the file of I Additional Junior Civil Judge, Chittoor. This suit was filed against her and others by 1st respondent herein for a perpetual injunction restraining them from interfering with 1st respondent's peaceful possession and enjoyment of the plaint schedule property and for costs.

4. Written statement was filed by petitioner as well as respondent Nos.2 to 8 opposing the suit claim. Issues were framed and trial commenced.

5. Thereafter 1st respondent herein filed I.A.No.303 of 2014 to frame additional issue - “whether the registered relinquishment deed dt.20-07-1978 under Ex.A-5 was executed by Alimelamma and her daughters viz., 1st defendant herein and Lakshmamma in favour of K.Venkata Swamy and his brother 2nd defendant herein with regard to their entire immoveable and moveable properties rights, is true and correct?”

6. This application was opposed by petitioner on the ground that there was no pleading in the plaint on this point and without a pleading, additional issue cannot be framed. So that application was dismissed by Court below on 17-06-2014 on the ground that there was no pleading in the plaint.

7. In the meantime, trial in the suit had concluded and the matter was posted for arguments in the suit.

8. At that stage, 1st respondent herein filed I.A.No.414 of 2014 to permit him to amend the plaint and introduce a pleading regarding Ex.A-5 document. He also filed I.A.No.413 of 2014 to reopen the suit to permit him to file the consequent amendment petition to amend the plaint.

9. Both these applications were opposed by petitioner

herein denying that 1st respondent came to know of Ex.A-5 pending suit. She contended that the relinquishment deed Ex.A-5, which is now sought to be pleaded by 1st respondent/plaintiff is a registered document and that registration of such a document itself is

‘public notice’ under Section 3 of the Transfer of Property Act, 1882 (for short ‘the Act’) and so he is deemed to have knowledge of it. It was contended that the evidence on the side of plaintiff was closed long back and 1st respondent had produced the alleged relinquishment deed into Court but did not come forward to amend the plaint at that stage; that now after closure of evidence on both sides, when the matter is posted for arguments, these applications have been filed; and these cannot be allowed because they are filed only to harass the defendants and to drag on the suit. It is contended that if the plaint is allowed to be amended at this stage, all the defendants would have to file additional written statements, then additional issues have to be framed and thereafter again both parties have to lead additional evidence on the fresh pleadings and practically there has to be a

de novo trial. It was also pointed out that the proposed amendment takes away an important admission by 1st

respondent/plaintiff that petitioner is owner of the adjoining property and introduces a new case, which cannot be permitted.

10. By order dt.25-07-2014, I.A.No.414 of 2014 was allowed. Consequently, I.A.No.413 of 2014 was also allowed.

11. In the order passed by the Court below in I.A.No.414 of 2014, while the Court below admitted that the application is filed at the fag end of arguments, it accepted the plea of 1st respondent that he came to know about the existence of Ex.A-5 six months back after the suit was filed. So it held that the amendment of the plaint can be allowed in order to avoid multiplicity of proceedings.

12. Challenging the same, these two Revisions are filed.

13. The learned counsel for petitioner submits that Ex.A-5 relinquishment deed in respect of which additional pleading was sought to be raised by 1st respondent is a registered document, that under Section 3 of the Act, registration of a document is a public notice, and therefore, the plea of 1st respondent that he came to know about Ex.A-5 only after the suit was filed, cannot be accepted. He therefore prayed that the impugned orders be set aside.

14. The learned counsel for 1st respondent supported the orders passed by the Court below and contended that the Court below was correct in allowing amendment of plaint accepting the plea of

1st respondent that he came to know about Ex.A-5 relinquishment deed pending suit. He also placed reliance on the judgments in **Abdul Rehman and Another Vs. Mohd. Ruldu and others**^[1], **Sanapala Ramanujulu @Ramanuja Charyulu Vs. Sanapala Sridhrudu (died) and others**^[2] and **Kovvuri Ramakrishna Reddy and Padala Satyanarayana Reddy and another**^[3] in support of his submissions.

15. I have noted the submissions of both sides.

16. There is no dispute that Ex.A-5 document is a registered relinquishment deed dt.20-07-1998 allegedly executed by the petitioner, her mother and sister in favour of 2nd defendant and his brother relinquishing their right over the entire moveable and immoveable properties.

17. Section 3 of the Act states:

“3. Interpretation clause: ...

‘a person is said to have notice’ of a fact

when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I:- Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, [where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of Section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated]:

Provided that –

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder;

(2) the instrument [or memorandum] has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under Section 55 of that Act” (Emphasis supplied).

18. Therefore, the plea of 1st respondent that he came to know about the existence of the registered relinquishment

deed Ex.A-5 only after filing the suit, cannot be accepted because he is deemed to have notice of it as per explanation-I to Section 3 of the Act. It is unfortunate that the Court below, in spite of a plea having been raised by petitioner quoting Section 3 of the Act, did not advert to it in its order.

19. Order VI Rule 17 CPC states :

“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.”

20. From the above provision, it is clear that although amendments to pleadings can be permitted if they are necessary for the purpose of determining the real question in controversy between the parties, such application for amendment will not 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. In view of this provision, and Section 3 of the Act referred

to above, once it is presumed that 1st respondent had knowledge of Ex.A-5 at the time when it was registered, and his plea that he came to know about Ex.A-5 after filing the suit is not accepted, then the proviso creates a bar to allow the application for amendment. This is because 1st respondent can no longer claim that in spite of due diligence, he could not raise this matter before commencement of trial.

21. In **Abdul Rehman** (1 supra), the Supreme Court also reiterated this principle. In that case after commencement of trial, an application for amendment of plaint was filed to make it clear and explicit what was already in plaint and to include the relief of declaration in addition to relief of perpetual injunction which had been claimed in the unamended plaint. The Supreme Court held that amendment of this nature which does not change the nature of suit can be permitted in the facts and circumstances of that case.

22. In the present case, in the plaint, it is the specific case of

1st respondent that the petitioner, 2nd respondent and 3rd respondent have vacant sites on the eastern and northern side of the plaint schedule properties and they were

frequently giving trouble to

1st respondent in enjoyment of the plaint schedule property. Thus, the title of petitioner to the adjacent property is admitted by 1st respondent in the plaint. Now, by way of proposed amendment, the

1st respondent/plaintiff wants to raise a plea that petitioner/1st defendant has no title, since she had relinquished her interest in the property under Ex.A-5 dt.20-07-1998 in favour of 2nd respondent. If the amendment is allowed, it would result in taking away the admission in the plaint by 1st respondent about title of petitioner to the adjacent property. It is settled law that the amendment to pleadings withdrawing an admission cannot be permitted (**Heeralal Vs. Kalyan Mal and others** ^[4]). On this ground also, the application for amendment of plaint sought by 1st respondent cannot be allowed.

23. In **Sanapala Ramunujulu @ Ramanuja Charyulu** (2 supra), after a suit for perpetual injunction was filed, application seeking amendment of the plaint was filed contending that during pendency of the suit, taking advantage of plaintiff's absence at a time that he was sick and hospitalized and his family members were there in

hospital attending on him, the respondents made construction of a house in a part of the plaint schedule property forcibly and so the petitioner be permitted to amend the plaint by seeking an additional relief of mandatory injunction apart from making other amendments in the body of the plaint. The trial Court dismissed the application for amendment on the ground that this was sought at the time when the case was coming up for arguments and also on the ground that the date of the alleged construction of the house by respondents, was not mentioned. This Court in a Revision filed against the said order by the Court below allowed the said Revision on the principle that if the cause of action arose during pendency of the suit, the proposed amendment ought to be granted, that the basic structure of the suit has not changed and there was merely a change in the relief claimed. The said decision does not apply to the present case because this is not a case where amendment of plaint is sought on the ground that certain events have occurred pending suit.

24. In **Kovvuri Ramakrishna Reddy** (3 supra), an application for amendment of plaint to incorporate the relief of future profits was sought. That application was dismissed by the trial Court on the ground that it was filed

belatedly at the stage of arguments. This Court set aside the said order and held that the relief of future profits is a consequential relief if the plaintiff succeeds, and on the ground of mere delay, application for amendment cannot be rejected and that for mistake of a counsel in not incorporating the relief in the plaint, the party cannot be made to suffer.

25. In my considered opinion the observations of the Court an error of a counsel would furnish a ground to a party to seek amendment of pleadings, is too broadly stated, and if accepted, this would allow parties to circumvent the proviso to Order VI Rule 17 CPC by always throwing the blame on the counsel, who originally drafted the pleading.

26. In **Surender Kumar Sharma Vs. Makhan Singh** ^[5], no doubt the Supreme Court observed that even if the amendment is sought belatedly, it can be permitted if it allows real controversy between the parties to be resolved. The proviso to Order VI Rule 17 CPC was not considered in the said judgment and from the facts in the said case, it does not appear that the Supreme Court was dealing with a suit filed after the year 2002 when the proviso was inserted in Order VI Rule 17 CPC. Since the Supreme Court in **Abdul Rehman** (1 supra) has

considered the proviso and held that the proviso, to some extent, curtails the absolute discretion to allow amendment at any stage, it has to be accepted that the principle laid down in **Surender Kumar Sharma** (4 supra) may not apply to cases where the amendment is sought in suits filed after the year 2002.

27. For all these reasons, I am of the opinion that the order

dt.25-07-2014 in I.A.No.414 of 2015 in O.S.No.462 of 2006 cannot be sustained. C.R.P. No.2995 of 2014 is allowed accordingly and the said order is set aside. No costs.

28. In view of allowing of C.R.P.No.2995 of 2014 and setting aside the order dt.25-07-2014 in I.A.No.414 of 2014, the order passed by the Court below dt.25-07-2014 in I.A.No.413 of 2014 in O.S.No.462 of 2006 reopening the suit to file consequential amendment petition to amend the plaint, is also set aside. C.R.P.No.2993 of 2014 is allowed accordingly. No costs.

29. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 17-06-2015

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[\[1\]](#) (2012) 11 SCC 341

[\[2\]](#) 2014(2) ALD 365

[\[3\]](#) 2012(4) ALT 1

[\[4\]](#) AIR 1998 SC 618

[\[5\]](#) (2009) 10 SCC 626