

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.2596 of 2015

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ORDER :

The petitioners herein are defendants and respondent Nos.1 and 2 are plaintiffs in O.S.No.25 of 2002 on the file of the IV Additional District Judge, Kadapa. The plaintiffs filed I.A.No.1254 of 2014 under Order VI Rule 17 C.P.C to amend the plaint pleadings. There is no dispute on the factum that the suit was filed on 18.04.2002 ie., prior to 01.07.2002 when the C.P.C. amendments by Act 46 of 1999 and 22 of 2002 are in force undisputedly. It is to say, the rigor of the amended Order VI Rule 17 C.P.C. of due diligence after commencement of trial that was not there prior to amendment with effect from 01.07.2002 is not applicable retrospectively even the suit filed and pending by the time the amendment came into force as per the settled expression of this Court. Now once that rigor has no application, the only thing to be seen from the amendments sought for and alleged, the trial Court by the impugned order I.A.No.1254 of 2014 dated 22.04.2015 whether it can be entitled to be allowed or it causes any prejudice to the rights of the defendants or at alternative of cause of action, as the case may. Undisputedly, the 2nd plaintiff is not the original party, much less, original cause

of action laid down in the suit, but for claiming as legal representative by stepping into shoes of the deceased-sole plaintiff, it is settled law that a person stepping into shoes, such person cannot improve the case than that of the original party nor can claim anything beyond rights succeeded of the estate of the original party. Undisputedly, as per orders in I.A.No.124 of 2006 dated 05.06.2006, the plaintiff-petitioner as the 2nd plaintiff sought for several amendments to the plaint and that were allowed. So far as the proposed amendment sought for covered by the impugned order in I.A.No.1254 of 2014, particularly to para 12(a) of the original amended plaint in 2006 concerned is to the extent regarding in the Will dated 16.04.2005 of the 1st plaintiff, who died later testate on 24.04.2005, bequeathing her interest in saying it is a codicil or supplement or modification to the earlier Will of the 1st plaintiff dated 29.12.2001. It is not a new cause of action, much less, a subsequent event nor even the same not known to bring the amendment to incorporate additionally with any explanation as para 12(a) of the plaint to amend, thereby the same no way sustainable for the trial Court ignoring this factum from the factual matrix of the case irrespective of due diligence concept does not apply to the existing plaint claim prior to 01.07.2002.

2. So far as the other reliefs sought for amendment at para 14(a), 14(b) and 14(c) in relation to the payment of

court fees including at the end of para 14 for the relief of cancellation concerned, the amendment sought for was allowed in the year 2006 as referred supra. These are not the subsequent events even to amend. Apart from it, once the value made in the plaint by amendment relief, if at all, any additional court fees that to be paid, it was supposed to be paid for the Court to entertain, it was not even paid and any explanation not even sought as contemplated by Section 149 C.P.C., leave about non-application of Sections 148 and 151 C.P.C. because of the subsequent provisions, there is a saving provision even otherwise from the combine reading of Sections 11 and 12 of the A.P. Court Fees and Suits Valuation Act, 1956, which says a relief even sought for by non-payment of the additional court fee relinquished can be revived not only before the trial Court but even at the appeal stage, further more when the law is very clear from other expressions of this Court even of any deficit court fees if not properly valued, leave about the right of the party for explanation under Section 149 C.P.C.; the power of the Court in directing to pay the court fee by fixing a time and non-payment can take recourse to reject the application as contemplated by Order VII Rule 11 Clause (c) C.P.C., the Court did not take an ordeal undisputedly. When such is the case and the Court is not powerless including the expression of this Court in **T.Tharamma v.**

T.Ramchandra Reddy and others^[1], that is further extended by two subsequent expressions AIR 1973 AP 125 and in **Mohd. Shahbuddin v.Ahmed**^[2] besides the Full Bench expression of Madras High Court in **P.V. Subramanyam v. Rajaiah**^[3] reiterated in **G.C.Kumar V.Ashok Kumar**^[4] of even deficit court fees not paid pursuant to direction in the judgment, decree has to be drawn up with no postponement, but for with endorsement of deficit court fees payable and without such payment decree cannot be executed, leave about non-payment of deficit court fees will not save limitation for any purpose. When such power is there to Court, these amendments at this stage of the suit reopen for arguments also does not arise. Apart from it so far as the future profits are concerned, the profits from the date of suit either under Order XX Rule 12 or Rule 18 C.P.C., the question of future cause of action need not be valued to say future profits are being determined on a separate application and in **Gopala Krishna Pillai v. Meenakshi Ayal**^[5], plaintiffs need not make out the future cause of action nor can value the future profits to be determined from the date of suit, but for to value the existing cause of action as on the date of the suit, all the said amendments sought are unsustainable, thereby the revision is allowed by making it clear that the entitlement to the reliefs by the plaintiffs no

way be prejudiced by virtue of this order nor take away the power of the Court while pronouncing judgment in asking to pay any deficit court fee, if at all, payable from the reliefs as per the material on record, including with endorsement of non-payment of deficit court fee within the stipulated time does not entitle to execute or to enforce the decree or to save the limitation of the decree as discussed supra. It is for the reason there is no question of estoppel in a court fees matter to revise from time to time on sufficiency within the power of the court but for after pronouncement of judgment by trial court being functions officio viok in Re Govinda Rama Raja ^[6].

3. Accordingly and in the result, the civil revision petition is disposed of.

4. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

22nd December 2015

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^[1] AIR 1968 AP 333

^[2] AIR 1973 AP 199

^[3] AIR 1962 AP 90/1941 Madras 929

^[4] AIR 2001 Delhi 338

[\[5\]](#) AIR 1967 SC 155

[\[6\]](#) ILR 1969 AP 498