

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.1407 OF 2012

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.08.12.2011 in I.A.No.1931 of 2009 in O.S.No.452 of 2007 of the II Additional Junior Civil Judge, Tadepalligudem, West Godavari District.

2. The petitioners herein are the plaintiffs in the above suit. They alleged that Sri Surpani Chinaganga Raju, who is father of petitioners 1, 2, & 4 and father-in-law of the 3rd petitioner, purchased the suit schedule property under an agreement of sale dt.14.07.1975 and paid the entire consideration but the respondent did not execute any sale deed in favour of Chinaganga Raju; the said Chinaganga Raju died in 1999; that the respondent tried to trespass into the suit schedule property and therefore they had filed the above suit for injunction.

3. Written statement was filed by the respondent contending that the petitioners had no title to the suit schedule property and he is still its owner.

4. Thereafter, I.A.No.1711 of 2009 was filed by the petitioners to amend the plaint by adding relief of declaration of title. The said application was however not pressed.

5. The petitioners then filed I.A.No.1931 of 2009 seeking to add the relief of specific performance of the agreement of sale as an additional relief to the relief of permanent injunction already sought in the plaint.

6. This application was filed at the time when the trial had not commenced.

7. In I.A.No.1931 of 2009, the petitioners contended that when they filed the suit, there was only a threat of dispossession from the respondent. But since the respondent filed the written statement disputing title and contending that the suit for mere injunction was not maintainable, to avoid multiplicity of proceedings they were advised to seek relief of specific performance also and therefore they filed the said I.A.

8. Counter affidavit was filed by the respondent opposing the said amendment. It was pointed out that the petitioners had filed I.A.No.1711 of 2009 seeking the relief of declaration but later withdrew it; and again filed the present application seeking addition of relief of specific performance also. It was contended that the plea now sought to be raised by way of amendment is barred by limitation and petitioners are not entitled to the relief of specific performance.

9. By order dt.08.12.2011 the Court below dismissed the said application.

10. It observed that the petitioners ought to have sought the relief of specific performance in the suit itself since they were aware even at the time of filing of the suit that there was no registered sale deed in their favour. It further held that the respondent had contended that executant of the agreement of sale had eight sons and three daughters, but the suit was filed only against one defendant leaving out his sons and three daughters who are also necessary and proper parties to the suit. It referred to the plea of the petitioners that there was a partition among the family members of the petitioners in May, 1983 and wondered how the said partition took place. It also observed that there is no amendment sought to the cause of action part in the plaint and that the addition of relief of specific performance changes the entire cause of action.

11. Challenging the same, this Revision is filed.

12. Heard Sri M.P.Chandramouli, counsel for the petitioners and Sri K.B.Ramanna Dora, counsel for the respondent.

13. Counsel for the petitioners contended that there is nothing wrong in the petitioners withdrawing I.A.No.1711 of 2009 having realized that without registered sale deed, they cannot seek declaratory relief and then filing I.A.No.1931 of 2009 seeking specific performance. He also contended that the addition of a relief in the plaint does not alter the nature of the suit or the cause of action in the suit; and that when the plea that defendant had eight sons and three daughters was

not even raised in the counter affidavit filed in the I.A.No.1931 of 2009, the Court below is not correct in stating that such other children of the defendant are proper and necessary parties to the suit. He pointed out that in the plaint the allegation is that it was the defendant alone who executed the agreement of sale and at the stage of considering the application for amendment these matters cannot be gone into.

14. Counsel for the respondent on the other hand refuted the above contentions and supported the order passed by the Court below.

15. From the facts narrated above, it is clear that the suit was filed by the petitioners initially for perpetual injunction on the basis that Sri Surpani Chinaganga Raju, who is father of petitioners 1, 2, & 4 and father-in-law of the 3rd petitioner, had obtained an agreement of sale in respect of the suit schedule property on 14.07.1975 from the respondent. When the respondent filed written statement contending that he was still the owner, the petitioners then thought it fit to seek the relief of specific performance of the said agreement of sale also.

16. The mere fact that they filed I.A.No.1711 of 2009 initially seeking declaration of title and then did not pursue it cannot be put against the petitioners.

17. It may be that the petitioners were aware when they filed

the suit that they did not have a sale deed and that they had only an agreement of sale, but at the time of filing of the suit, according to the petitioners, there was only a threat to their possession and it was only after the written statement was filed that they came to know about the denial of their title by the respondent and that was when they filed I.A.No.1931 of 2009. Therefore, the mere fact that the petitioners had not sought the relief of specific performance when they filed the suit, cannot be said to be a bar to the petitioners to seek specific performance of agreement of sale.

18. Further the plea that the respondent had three daughters and eight sons was raised obviously only during the arguments in I.A. before the Court below without there being any pleading in the counter affidavit. When the agreement of sale is executed only by the respondent, it cannot be said that his sons and daughters are necessary and proper parties to the suit for specific performance.

19. Although counsel for the respondent sought to contend that the property is joint family property in which the children of the respondent also have a share, and that the suit agreement of sale itself is a forged document, these are all the issues which cannot be gone into at the stage when the Court is considering whether or not to permit amendment of the plaint. Once the plaint is amended the respondent would have an opportunity to file an additional written statement or to amend

the written statement which he had already filed taking all the pleas available to him and only then these issues can be taken into account.

20. I am also of the opinion that addition of relief of specific performance in the plaint does not change the nature of the suit or cause of action in the suit and that the Court below erred in holding that they are altered, by allowing the amendment.

21. In this view of the matter, the impugned order dt.08.12.2011 cannot be sustained.

22. Accordingly, the Civil Revision Petition is allowed. Order dt.08.12.2011 in I.A.No.1931 of 2009 in O.S.No.452 of 2007 of the II Additional Junior Civil Judge, Tadepalligudem, West Godavari District is set aside and the said I.A. is allowed. It is made clear that the respondent shall be entitled to file an additional written statement or to amend his written statement already filed raising all the pleas available to him including the plea of limitation. There shall be no order as to costs.

23. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

03rd September, 2015.
gra