

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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CIVIL REVISION PETITION Nos.1032 and 1041 of 2015

Between:
P.Rajini

....Petitioner

and

P.Narasamma and others.

....Respondents

JUDGMENT PRONOUNCED ON : 14.12.2015

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : Yes
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : Yes
see the fair copy of the Judgment?

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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+ CIVIL REVISION PETITION Nos.1032 and 1041 of 2015

% 14.12.2015

P.Rajini

...Petitioner

vs.

\$ P.Narasamma and others

... Respondents

!Counsel for the Petitioner : Sri M.Venkata Ramana Reddy

^Counsel for the Respondents : Sri A.P.Reddy

<Gist :

>Head Note :

? Cases referred

1. (2009) 2 SCC 409
2. (2013) 9 SCC 349
3. (2009) 10 SCC 626
4. (2009) 10 SCC 84
5. (2008) 14 SCC 364
6. (2007) 5 SCC 602
7. AIR 2009 SC 2544 : (2009) 10 SCC 434

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION Nos.1032 and 1041 of 2015

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COMMON ORDER:

These two Civil Revision Petitions are being disposed of by this common order as they arise out of a common cause of action.

The plaintiff is the petitioner. She filed O.S.No.15 of 2008 on the file of the learned II Additional District Judge, Madanapalle, seeking partition of plaint schedule properties by metes and bounds into five equal shares and for allotment of one such share to her. After filing the written statement by the defendants, the fourth defendant filed I.A.No.472 of 2014 seeking permission of the Court to condone the delay in receiving the original Will dated 07.10.1995 for the purpose of marking and also filed I.A.No.475 of 2014 for amendment of the pleadings in the written statement by inserting paragraphs 14A to D. Those two applications were allowed by separate orders on 30.01.2015 by the trial court, challenging which the present Civil Revision Petitions are filed.

In the affidavit filed in support of the applications, the fourth defendant stated that her deceased husband, during his lifetime, executed the Will in her favour on 07.10.1995 with limited rights to her and the items mentioned therein are nothing but the suit schedule properties of items 5, 7, 9 and 10. She further stated that her husband died on 08.04.1996 and the Will was acted upon. Though the plaintiff is her daughter and the other defendants are her children, they did not bring the above Will to the notice of the Court. She further stated that she was residing in the upper portion of the building, alone, preparing her own food and there was nobody to look after her welfare and other needs in the old age. Her upper joint in waist was fractured and she underwent surgery twice and the suit was filed for partition of properties for their greedy necessities leaving the old aged mother to her own. When she refused the request of the first defendant - her only son, to come to the Court and depose in his favour, he shouted at her. She then got her chief affidavit read over by her grandson and realized that the existence of

the Will was not brought to the notice of the Court. She searched for the Will and found it kept in a polythene cover intact. In the circumstances, she engaged her own Advocate and filed the applications.

A counter was filed by the plaintiff, who is none other than the daughter of the petitioner, denying the averments and stating that the fourth defendant filed a detailed written statement by engaging independent Advocate about five years back and she had contested the suit independently. The son of the petitioner also filed an independent written statement and both of them have taken the same defence. If really the Will was in existence, she would have filed the Will and pleaded her defence over the Will. The son of the fourth defendant, who is the first defendant, was sailing with her. The fourth defendant was present before the Advocate Commissioner and P.W.1 was cross examined by all defendants including her and she is well aware of the defence taken by her. The very recitals of the Will and written statement clearly disclose that the Will was created recently with the help of attestors and scribe in collusion with the first defendant.

The trial Court took into consideration the contents of the affidavit filed by the fourth defendant and also the counter affidavit filed by the plaintiff. It came to the conclusion that for proper adjudication of the matter, to avoid further litigation and in order to give a fair and reasonable opportunity to the petitioner to contest the matter, the petitions should be allowed. The trial Court also observed that by allowing the petition, no injustice or prejudice would be caused to the respondents. Accordingly, the applications were allowed.

Learned Counsel for the petitioner, by relying on **Vidyabai v. Padmalatha**^[1] and **S.Malla Reddy v. Future Builders Cooperative Housing Society**^[2], contends that the filing of the documents and amendment at this stage is in abuse of process of Court. He submits, that after commencement of the trial, the written statement cannot be allowed to be amended by granting leave to produce the document.

Vidyabai's case (supra), relied on by the learned Counsel for the petitioner, arises out of a suit for specific performance of agreement of sale. After two years of filing of the written statement, an application was filed seeking amendment of written statement along with an application for production of additional evidence. It was held that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. But, in view of the proviso to Order VI Rule 17 of CPC, the power of the Court is held to be limited.

S.Malla Reddy's case (supra) arose out of a suit for declaration of title and for

perpetual injunction. The defendants, after filing of the written statement admitting the claim of the plaintiff, filed a petition seeking permission to change their Advocates on the ground that they were acting detrimental to their interest by filing written statement contrary to the instructions. The same was permitted. Thereafter, they filed another petition seeking leave of the Court to strike out the pleadings in the written statement and permit them to file a detailed written statement. When the said applications were dismissed, the defendants filed Civil Revision Petitions and they were also dismissed. The review petition was also dismissed. The appeals to the Supreme Court were also dismissed. A fresh petition seeking leave of the Court to amend the written statement was allowed by the trial Court. When the plaintiff filed a revision challenging the said order, the revision petition was allowed by this Court. Against the said order, the matter went to the Supreme Court. The Supreme Court considered Rules 16 and 17 of Order VI of CPC and held that filing of a fresh petition by the defendants under Order VI Rule 17 of CPC after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined, was wholly misconceived.

In **Surender Kumar Sharma v. Makhan Singh**^[3] the Supreme Court held that the application for amendment cannot be decided solely on the ground of delay and if the Court finds that by allowing the application, the real controversy between the parties can be resolved, the application can be allowed by compensating the opposite party by costs.

In **Ravajeetu Builders and Developers v. Narayanaswamy and Sons**^[4] the Supreme Court cautioned the trial Courts to see whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case.

In **Rajkumar Gurawara v. S.K.Sarwagi and Company Private Limited**^[5] the Supreme Court held that a just and proper amendment can be introduced at any stage as may be necessary for the purpose of determining the real questions in controversy.

The Supreme Court thoroughly considered the issue of an amendment of written statement in **Usha Balashaheb Swami v. Kiran Appaso Swami**^[6] and held that different principles are applicable for the amendment of the plaint and written statement. It was held that when amendment of written statement was permitted by the trial Court in its discretion on consideration of the principles of law and the material on record, the High Court should not interfere in revision. The said case also arose out of a suit for partition and separate possession of suit schedule properties. The Supreme Court held that, from a bare reading of Order VI Rule 17 of CPC, it is clear that the Court is conferred with power, at any stage of the proceedings, to allow alteration and

amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. It was also held that the law is settled that the Courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bonafide one. It was further held that, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable, while adding, altering or substituting a new cause of action in the plaint may be objectionable. Ultimately, the Court held that in a case of amendment of a written statement the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed. The same principle was followed in

Sushil Kumar Jain v. Manoj Kumar^[7].

In the instant case, an old lady of 70 years filed the applications stating that her only son, who is the first defendant in the suit, did not disclose about the Will where she has life interest. She also explained the circumstances in which she was placed. The trial Court took the same into consideration and allowed the applications. In I.A.No.475 of 2014, it was observed as follows:

“On perusal of the contentions of the both parties, considering the facts and circumstances of the case, this Court is of opinion and conclusion that the old lady could not locate the Will executed by her husband due to her old age bed ridden condition after undergoing couple of operations subjected to negligence of the respondents 1 to 4 to look after her welfare. It appears from the contentions of the affidavit that the facts mentioned in the written statement are read over by her grandson. After that only she came to know the fraud and mischief played by her son (D1) as such, the old woman/petitioner herein decided to act on her own and proceed against her own children independently. Coming to the validity and admissibility of the Will, it is not the stage to decide about the evidentiary value of the Will as the burden is always on the petitioner to establish the execution of the Will with cogent and convincing evidence. Under submitted circumstances, it appears that inspite due diligence the petitioner could not have submitted the document before the commencement of trial. Therefore, the objections raised by the respondent No.1 are no relevance and value at this stage. In order to determine the real question in controversy between the parties this Court is of the clear opinion that the petition can be allowed to strike out the pleadings in the written statement filed by the petitioner as D4 and carrying out the amendment as mentioned in the petition, more particularly add 14-A to 14-D as no harm, injustice and loss will be caused to the respondents herein at this stage as they will have ample opportunity to question the document. The point is answered in favour of the petitioner and against the respondents.”

The counter affidavit filed by the plaintiff did not state how she was prejudiced by such an amendment. Whether the Will is genuine or not, it is for her to prove and on that ground, the valuable right of the fourth defendant cannot be curtailed.

In view of the above, the Civil Revision Petitions are dismissed. The

miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

14.12.2015
vs

[\[1\]](#) (2009) 2 SCC 409
[\[2\]](#) (2013) 9 SCC 349
[\[3\]](#) (2009) 10 SCC 626
[\[4\]](#) (2009) 10 SCC 84
[\[5\]](#) (2008) 14 SCC 364
[\[6\]](#) (2007) 5 SCC 602
[\[7\]](#) AIR 2009 SC 2544 : (2009) 10 SCC 434