

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

CIVIL REVISION PETITION No.2744 of 2014

ORDER:

Heard Sri J. Seshagiri Rao, learned counsel for the petitioner and Sri D.V. Seetharama Murthy, learned Senior Counsel instructed by Ms. Vanajakshi, learned counsel for respondents 2 to 7 and Sri M.S.R. Subrahmanyam, learned counsel for respondent No.8.

2. This Revision petition is filed under Article 227 of the Constitution of India challenging the order dated 6.06.2014 passed in I.A.No.274 of 2014 in O.S.No.596 of 1988 by the I Additional Senior Civil Judge, Visakhapatnam.

3. The petitioner herein is the 2nd defendant in the suit.

4. The above suit was filed by one Mamidi Rama Krishna Prasad, 1st respondent herein, against the 8th respondent herein for specific performance of agreement of sale dt.20.09.1983 allegedly executed by the 8th respondent in his favour.

5. The 8th respondent filed written statement contending that there is an earlier agreement of sale dated 29.09.1982 in favour of the petitioner herein.

6. The 1st respondent, however, contended that the said agreement of sale dated 29.09.1982 is sham, nominal and fraudulently brought into existence to defeat his claim since the petitioner, the alleged earlier agreement holder, is none other than the brother of 8th respondent.

7. In the suit, the petitioner was not impleaded as party defendant.

8. On 16.11.1998 the trial Court decreed the suit and directed the 8th respondent to execute registered sale deed in favour of the nominee of 1st respondent.

9. The 8th respondent filed A.S.No.358 of 1999 against the said judgment.

10. On 21.11.2001, this Court allowed the said appeal and remanded the matter back to the trial Court to implead the petitioner herein as a party defendant. It directed that opportunity be given to all the parties to lead evidence.

11. Subsequently, it appears that O.S.No.596 of 1988 was dismissed on 28.03.2002 for default. No notice was sent to the 1st respondent or to the petitioner herein after reopening of the suit after remand.

12. On 16.09.2002 the 1st respondent died and respondents 2 to 7 have filed implead petition to bring them on record in the suit. The said application was dismissed by the trial Court.

13. Thereafter, C.R.P.No.6171 of 2006 was filed before this Court. The said Revision was allowed and they were permitted to be impleaded as plaintiffs 2 to 7 in the suit.

14. Thereafter, neat copy of the plaint was presented showing petitioner herein as 2nd defendant in the suit. Summons were issued to petitioner and petitioner filed a written statement contending that his agreement of sale is earlier to the agreement of sale dt.20.09.1983 allegedly executed by 8th defendant in favour of deceased-1st respondent; that he filed O.S.No.324 of 1996 for specific performance of the agreement of sale dt.29.09.1982 against 8th respondent; that it was decreed; and an E.P. was also filed. Evidence was led again and petitioner was also cross-examined on behalf of respondents 2 to 7.

15. During the cross-examination of PW.5 on behalf of the petitioner, it came to light that though the petitioner was named as 2nd defendant, there was no formal petition under Order I Rule 10 C.P.C., to implead him as 2nd defendant.

16. Therefore, I.A.No.274 of 2014 was filed under Order VI Rule 17 C.P.C. by respondents 2 to 7 seeking amendment of the plaint. In the proposed amendment, respondents 2 to 7 sought to substitute the word “1st defendant” wherever the word “defendant” occurs in the plaint pleadings and in the prayer portion substitute the word “defendants” in the place of defendant. They also wanted to include a para-III(d) in the plaint referring to the subsequent events i.e., the order in A.S.No.358 of 1999 etc., and raised a plea that the alleged agreement of sale obtained by the petitioner and also the suit and E.P. filed by him, would not bind on the respondents, the petitioner has been set up by the 1st defendant to defeat the claim of the 1st respondent and the transaction between the petitioner and 8th respondent is a collusive one.

17. A counter affidavit was filed by the petitioner opposing the said amendment. It is his case that the proposed amendment is barred by time and cannot be entertained. He also contended that it would delay the proceedings in the suit and great prejudice would be caused to the petitioner if the application is allowed.

18. By order dated 6.06.2014, the Court below allowed the said application. It held that filing of formal application under Order I Rule 10 C.P.C to implead the petitioner is an empty formality having regard to the order passed by this Court in A.S.No.358 of 1999 impleading the petitioner as 2nd defendant in the suit, and if consequential amendments, after adding the petitioner, did not take place, substantial justice would be defeated and so the application for amendment be allowed.

19. Challenging the same this Revision petition is filed.

20. Learned counsel for petitioner contended that the Court below erred in permitting the amendment of plaint at this point of time; that the proviso to Order VI Rule 17 C.P.C., introduced by way of amendment to the C.P.C in the year 2002 bars respondents 2 to 7 from seeking amendment of plaint since they did not exhibit due diligence; the cause

sought to be set up in the amendment is barred by limitation and it cannot be allowed to be introduced at this point of time. He also contended that after remand, the suit was dismissed on 28.03.2002 for default and on this ground also, after its restoration, the proviso to Order VI Rule 17 C.P.C., would apply.

21. Learned counsel for respondents 2 to 7 on the other hand refuted these arguments and contended that amendments became necessary consequent to the judgment in A.S.No.358 of 1999 of this Court; no prejudice would be caused to the petitioner since he was added as 2nd defendant, summons were issued to him and written statement was also filed by him; and the relief claimed in the amendment is not barred by limitation.

22. Admittedly, the petitioner herein has been impleaded in the suit pursuant to the judgment dated 21.11.2001 in A.S.No.358 of 1999. No doubt formal application for impleadment was not filed. But the fact remains that the petitioner was added as 2nd defendant in the plaint, summons were sent to him and he also filed written statement opposing the suit claim.

23. It is no doubt true that the petitioner had been impleaded without an application to that effect under Order 1 Rule 10 C.P.C., being filed by respondents 2 to 7. But subsequently amendment petition was filed seeking consequential amendments in the plaint as mentioned above. In the present case, thus there is some delay in filing the application under Order VI Rule 17 C.P.C., to amend the plaint.

24. The fact remains that the suit is of the year 1988 therefore proviso to Order VI Rule 17 introduced by C.P.C. Amendment Act 22 of 2002 with effect from 01.07.2002 has no application. In any event, since the petitioner had been impleaded pursuant to the direction made in the first appeal, even if the proviso to Order VI Rule 17 introduced by C.P.C., Amendment Act 22 of 2002 is made applicable, still it cannot be said that

respondents 2 to 7, in spite of due diligence, could have raised the matter before the commencement of trial. Therefore, the argument of the learned counsel for the petitioner relying on the proviso to Order VI Rule 17 C.P.C is without any substance. The purpose of permitting amendment of pleadings would be to avoid multiplicity of proceedings and since the litigation between the parties has commenced in 1988 itself, in the interests of justice, I hold that the Court below rightly allowed the application for amendment.

25. Coming to the other submission of the learned counsel for the petitioner that the amendment, if allowed, would be barred by limitation, dealing with the said issue the Supreme Court in **L.J. Leach and Co., Ltd., v. M/s.Jardine Skinner and Co.**,^[1] held at paragraph Nos. 16 to 17 as under:

“It is no doubt, true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice. In Charan Das v. Amir Khan 47 Ind App 255: (AIR 1921 PC 50) (A) the Privy Council observed:

“That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where the effect is to take away from a defendants, legal right which has accrued to him by lapse of time, yet there are cases where such considerations are out-weighed by the special circumstances of the case.”

Vide also Kisan Das v. Rachappa ILR 33 BOM 644 (B).

In the present case, apart from the contents of the plaint already set out, there is the fact that the defendants cancelled the contract without strictly complying with the terms of cl. 14. The ground on which they repudiated the contract was that the second plaintiff had assigned his interests to the first

plaintiff ; but the record shows that subsequent to the assignment the defendants had business transactions with both the plaintiffs and therefore the ground for cancellation appears to have been a mere device to deprive the plaintiffs of the benefits of the orders which they had placed. We are of opinion that the justice of the case requires that the amendment should be granted.”

26. This judgment has been followed even subsequently by the Supreme Court in **South Konkan Distrilleries & anr. Vs. Prabhakar Gajanan Naik & ors.**^[2]. In that case the Supreme Court held that Court should be extremely liberal in granting amendment, provided the same was within the period of limitation or there is an arguable issue with regard to the point of limitation. It followed its earlier decision in **Pankaja v. Yellappa**^[3].

27. In my considered opinion the application for amendment was rightly allowed by the Court below and no prejudice is caused to the petitioner in any manner since the petitioner would have an opportunity to amend the written statement and also lead evidence in support of his case. The interests of the petitioner would be further preserved if the Court below frames an issue “whether the challenge to the agreement of sale dt.29.09.1982 by plaintiffs is barred by limitation or not?”; and “whether the agreement of sale dt.29.09.1982 as well as the judgment in O.S.No.324 of 1996 and the sale deed obtained pursuant thereto by the petitioner from the 8th respondent herein are collusive transactions or not?”

28. The Civil Revision Petition is dismissed with the above directions. Since the suit is of the year 1988, the Court below shall endeavour to dispose of the suit itself within a period of six months from today. Both sides shall give full cooperation to the Court for its early disposal. No costs. As a sequel, miscellaneous petitions, if any, shall stand closed.

M.S. RAMACHANDRA RAO,J.

22nd June, 2015
Js.

[\[1\]](#) AIR 1957 SC 357

[\[2\]](#) (2008) 14 SCC 632

[\[3\]](#) (2004) 6 SCC 415