

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CIVIL REVISION PETITION No.3393 of 2015

ORDER :

This revision is filed by the petitioner, who is petitioner/plaintiff aggrieved by the order dated 10.07.2015 in I.A. No.802 of 2015 in O.S. No.133 of 2006 on the file of Senior Civil Judge, Kadapa, YSR Kadapa District which was filed by the petitioner/plaintiff under Order VI Rule 17 C.P.C seeking to permit them to amend the plaint.

2) Heard the learned counsel for the petitioner before admission, before ordering notice to the respondents and perused the material on record.

3) The main suit is filed by the plaintiff for the relief of partition of plaint A & B schedule property into two equal shares and for allotment of one such share to him and also for permanent injunction restraining the sole defendant from alienating the plaint schedule property and also for measne profits. The sole defendant since died in the year 2010, the 2nd defendant is impleaded as his legal representative as per in I.A. No.81 of 2010 dated 12.08.2010 and also later the 3rd defendant as per order in I.A. No.12 of 2012 dated 04.03.2013 with consequential amendment of the plaint. The 2nd defendant filed written statement with contest that there was already in the year

1973 a partition between the two brothers viz., plaintiff and the 1st defendant some time after death of their father Subbanna in the year 1972 and their mother Subbamma also died in the year 1977 and the 1st defendant executed gift deed for items 1 to 5 out of the six items fell to his share in favour of the 2nd defendant on 23.06.2006 and was accepted and since then in possession as owner by enjoying with mutation in revenue records. It is also the contest that item No.8 of plaint 'A' schedule sold by father of plaintiff and 1st defendant to five persons who are in possession for past more than 50 years and the suit claim is false and is liable to be dismissed.

4) Undisputedly pursuant to which the trial Court heard and settled issues and put the parties to trial. It is after evidence of plaintiff and while the defendants evidence is in progress, the petition for plaint amendment to include the properties covered by the gift deed of 2006 sought by plaintiff and opposed by defendants. The contest of the Plaintiff-petitioner is that, due to his old age he had forgotten to include certain lands in the plaint schedule though those lands also exclusively belong to his joint family, that he is a senior citizen and he is under impression that all the lands of his family are shown in the plaint schedule

5) The trial Court, after hearing, by impugned order dated 10.07.2015 in I.A. No.802 of 2015 dismissed the

application with observation that the petitioner having well aware not only execution of registered gift deed dated 23.06.2006 but also contents of the gift deed not included, those lands in the plaint schedule though could have amended the plaint basing on the registered gift deed, as such he cannot now take a plea that due to his old age he has forgotten to include the other properties covered by registered gift deed, that too the petitioner earlier filed petitions for amendment of the pleadings by impleadment of 2nd defendant-2nd respondent and hence the petitioner has no due diligence.

6) Learned counsel for the petitioner (plaintiff) is contending that the amendment of plaint schedule by addition of some more properties will not change the nature of the suit, that the inclusion of all the joint family properties in the plaint schedule is absolutely necessary in order to give finality of adjudication on all the joint family properties and to avoid multiplicity of cases and the amendment is thus necessary and prayed to allow the revision by setting aside the impugned dismissal order which will not cause any prejudice to the case of the defendants.

7) No doubt the learned counsel for the petitioner placed an expression of the Apex Court in ***Surender Kumar Sharma V. Makhan Singh***^[1] where it was

observed that merely because the amendment sought is belated that does not liable to be rejected on the ground of delay, where Court feels allowing of the application resolves the real controversy between the parties. It is in relation to the landlord-tenant relationship in the eviction matter. The amendment sought is only within the framework of the suit which no way changes the nature of the suit from eviction muchless any prejudice caused to the rights of the other side by said belated filing of application and the lower Court should have exercised the discretion rather than dismissal was the conclusion arrived.

8) In fact Order II Rule 2 C.P.C clearly speaks, where entire cause of action not included that tantamounts to relinquishment and that is also a bar for a subsequent suit. Even from para No.3 of the affidavit averments for the amendment, it is not a case pre-trial. It is not even a plea that at the time of commencement of trial or during cross-examination of P.W-1 it came to light to show due diligence. In this case undisputedly evidence of the plaintiff is already completed and D.W-1 came to witness box and deposed in chief-examination. It is not even mentioned as to how in the cross-examination of D.W-1 which is struck to add some more items of property to introduce as part of plaint schedule for the so called amendment. Having conscious and for the death of 1st

defendant, L.R. applications filed and the so called gift deed is part of the averments therein and also in the written statement of the 2nd defendant, the old age cannot be a ground and it is a clear case of lack of due diligence that will not allow that too the prejudice of the other side in asking the Court to exercise the discretion to permit the amendment that too against the discretionary order of the trial Court dismissing the application, by sitting in revision within the limited scope under Article 227 of the Constitution of India.

9) In the result, the revision is dismissed. There shall be no order as to costs.

10) As a sequel, miscellaneous petitions pending, if any, in this petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

25.08.2015
ksh

[\[1\]](#) (2009)10 SCC 626