

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1011 of 2016

ORDER:

Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.04-01-2016 in I.A.No.364 of 2015 in O.S.No.202 of 2006 of the Senior Civil Judge, Tadepalligudem, West Godavari District.

3. Petitioners herein are defendants in the suit. The 1st respondent filed the suit O.S.No.202 of 2006 for the partition of the plaint schedule properties.

4. The petitioners filed Written Statement contending that late Ravi Mahalakshmi, during her lifetime, executed a Will dt.02-08-2000 voluntarily in a sound and disposing state of mind bequeathing her properties to her daughter, the 1st petitioner (who is also the mother of petitioner Nos.2 to 4), without any right of alienation and after her lifetime, to her sons with absolute rights.

5. Issues were framed. Trial commenced and the evidence on the side of the plaintiff was closed.

6. At this stage, before commencing the

evidence of the defendants, I.A.No.364 of 2015 was filed by the petitioners stating that they had wrongly mentioned the date of execution of the Will of late Ravi Mahalakshmi as 02-08-2000, that the correct date is 02-08-2005 and this was noticed only on 20-08-2015. They contended that the mistake is purely a clerical one, that it had occurred on account of inadvertence and therefore the petitioners be permitted to amend the Written Statement by correcting the date of the execution of the Will as 02-08-2005 instead of 02-08-2000 in para-19 of the Written Statement.

7. Counter affidavit was filed by 1st respondent opposing this application. He pointed out that the Written Statement was filed by the defendants in February 2007, trial commenced in February 2010, and when P.W.1 was cross examined by petitioners' counsel, the basis for the cross examination also was that the deceased Ravi Mahalakshmi executed an alleged unregistered Will dt.02-08-2000 only and not that the date of the Will was 02-08-2005. He contended that the amendment sought by petitioners cannot be allowed and if allowed, it would cause serious prejudice to 1st respondent.

8. By order dt.04-01-2016, the Court below dismissed the said application. It held that the application for amendment was filed after cross examination of P.W.1, and the proviso to Order 6 Rule 17 CPC does not permit

pleadings to be amended once the trial has commenced. It also noted that I.A.No.24 of 2015 had been filed by the petitioners under Order 8 Rule 1A (3) CPC to condone the delay in filing the documents and only along with that petition, the Will dt.02-08-2005 allegedly executed by late Ravi Mahalakshmi was filed.

9. Learned counsel for the petitioners contended that the Court below erred in refusing to permit amendment of the Written Statement for the reasons assigned by it in its order. He reiterated that the mention of the date of execution of the Will as 02-08-2000 instead of 02-08-2005 was a *bona fide* mistake, that it had occurred inadvertently and the Court below therefore ought to have permitted the said amendment. He relied upon **Sajjan Kumar Vs. Ram Kishan**^[1], **Peethani Suryanarayana and another Vs. Repaka Venkata Ramana Kishore and others**^[2] and **Makineni Srinivas Rao and others Vs. Manthena Prabhakar Reddy**^[3].

10. Learned counsel for 1st respondent supported the order passed by the Court below.

11. From the facts narrated above, it is clear that the application for amendment of Written Statement for correcting the date of the execution of the Will of late Ravi Mahalakshmi as

'02-08-2005' instead of '02-08-2000' (as mentioned in para-19 of the Written Statement filed by the petitioners) was filed after P.W.1 was cross examined and admittedly after the trial had commenced.

12. Also the copy of the Will dt.02-08-2005 was admittedly not filed by the petitioners along with the Written Statement and it was produced along with I.A.No.24 of 2015 filed under Order 8 Rule 1 (a) (3) CPC in 2015, nine years after the suit was filed. No explanation is furnished in the affidavit filed in I.A.No.364 of 2015 as to why copy of the Will of late Ravi Mahalakshmi was not filed along with the Written Statement and why it was produced nine years after the suit is filed.

13. Order VI Rule 17 CPC reads:

“Order VI Rule 17 - Amendment of pleadings:-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

14. Thus, once the trial of the suit has commenced, an application for amendment of pleadings cannot be allowed unless the Court comes to the conclusion that in spite of due diligence, party could not have raised the matter before commencement of trial.

15. It is difficult to believe that at the time of drafting of the Written Statement or its filing, the learned counsel for the petitioners had not noticed the date of execution of the Will of late Ravi Mahalakshmi.

16. Admittedly, he cross examined P.W.1 mentioning the date of execution of the Will of Ravi Mahalakshmi as 02-08-2000 only and no suggestion was given to that witness that the date of execution of the said Will was 02-08-2005. Therefore, in my considered opinion, it cannot be said that the petitioners had exercised due diligence and for some valid reason could not have raised this issue before the commencement of the trial. This is fortified by the fact that the said Will was produced in the year 2015 along with I.A.No.24 of 2015, an application under Order 8 Rule 1 (a) (3) CPC.

17. In **Sajjan Kumar** (1 supra) and **Peethani Suryanarayana and another** (2 supra), cited by the learned counsel for the petitioners, the suits in question had been filed prior to 2002, the year in which the Code of Civil Procedure (Amendment) Act, 2002 (Act 22/2002) introducing the proviso to Order 6 Rule 17 CPC was

enacted. In the absence of proviso, on facts of those cases, the conclusion arrived at cannot be found fault with. Therefore, both those judgments have no application to the present case.

18. In **Makineni Srinivas Rao and others** (3 supra), amendment to the plaint was permitted on the ground that the trial had not effectively commenced and only affidavit of chief examination had been filed. Such is not the case here. Since the evidence on the plaintiffs' side had already commenced and P.W.1 had already been cross examined, even the said decision has no application.

19. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India. Therefore, the Civil Revision Petition is dismissed. No costs.

20. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-06-2016

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[\[1\]](#) (2005) 13 S.C.C. 89

[\[2\]](#) (2009) 11 S.C.C. 308

[\[3\]](#) 2014 (6) ALD 261