

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5520 of 2010

ORDER:

The present Civil Revision Petition is filed under Section 115 of C.P.C. aggrieved by an order dated 27.08.2010 passed in I.A.No.324 of 2010 in A.S.No.21 of 1997 on the file of the I Additional District Judge, Warangal, wherein and whereunder the learned District Judge dismissed the application for the amendment of the plaint filed in appeal.

The facts in issue are as under:

The petitioners filed O.S.No.150 of 1987 on the file of the II Additional Senior Civil Judge, Warangal, seeking partition and separate possession. After analysing the material available on record, the learned trial Judge dismissed the said suit. Aggrieved by the same, the petitioners filed A.S.No.21 of 1997 on the file of the I Additional District Judge, Warangal. Pending the said appeal, the petitioners herein filed I.A.No.671 of 1993 seeking amendments which was ordered and the amendments which were not permitted were also carried out in the plaint. Again the petitioner filed I.A.No.784 of 2009 seeking ratification of the amendments made to the original plaint in O.S.No.150 of 1987. The said petition was rejected by the appellate Court. Aggrieved by the same, the petitioners filed C.R.P.No.1337 of 2010 before this Court. By an order dated 15.04.2010 this Court dismissed the said revision. Again the petitioners filed I.A.No.324 of 2010 seeking amendment of the plaint. The said application for amendment was opposed by the contesting respondents on the ground that the proposed amendment changes the nature and

character of the suit and if allowed it would cause prejudice to them and that the application was filed at a belated stage i.e. in appeal, cannot be permitted. After hearing both parties the lower Appellate Court dismissed the application for amendment. Challenging the same the present revision is filed.

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

Learned counsel for the petitioners submitted that since the suit was dismissed and an appeal was filed against the dismissal of the suit, the petitioners filed petition seeking amendment of the plaint. He further contended that the proposed amendment does not create any new cause of action and no new facts are sought to be introduced; that the amendment of the plaint does not involve adducing any further evidence in the suit and there is also no necessity to remand the matter for further evidence. In support of his contention, learned counsel for the petitioners relied on the judgment of the Apex Court in ***Mahila Ramkali Devi and others v. Nandram (D) through legal representatives and others***^[1].

In the said case, the plaintiff/appellant No.1 filed a suit for declaration of title and possession of the suit property in Gwalior against the deceased Nandram and deceased Kashiram, who were original defendant Nos.1 and 2 and were represented through legal representatives and also against defendant No.3. The appellants challenged the validity of the sale deed purported to have been executed by Ajuddhibai in favour of defendant No.3 and sale deed executed by defendant No.3 in favour of defendant Nos.1 and 2, who are in illegal possession of the property contending that the said Ajuddhibai died issueless and before her death she executed a will in favour of the plaintiff. The trial Court

held that the will in favour of the plaintiff was proved and allowed the suit. Aggrieved by the same, defendant Nos.1 and 2 preferred appeal, which was dismissed by the appellate Court. Challenging the same, they preferred a second appeal before the High Court which was allowed. Assailing the same, the plaintiff preferred appeal before the Apex Court. The Apex Court remanded the matter to the High Court with a direction to formulate substantial question of law and then decide the appeal afresh.

The said judgment in my view will not apply to the case on hand.

On the other hand, the learned counsel for the respondents has tried to sustain the order of the lower Appellate Court by reiterating the reasons given by the lower Appellate Court in its order.

A perusal of the material on record would show that after impleading the legal representatives of the first defendant, certain amendments were made in the plaint without leave of the Court and the same was pointed out during the course of arguments in the appeal. Hence, the petitioners filed I.A.No.784 of 2009 to ratify the said amendments, which was dismissed on 26.12.2009. Aggrieved by the same, the petitioners preferred C.R.P.No.1337 of 2010 before this Court. By an order dated 15.04.2010 this Court dismissed the said revision. Relevant portion of the order is as under:

“During the course of arguments, it is fairly submitted by the learned counsel for the petitioners that no application under Order VI Rule 17 C.P.C. was filed in the suit before the trial Court. While it is

open to the petitioners to move amendment petition under Order VI Rule 17 C.P.C., in the absence of any such application before the trial Court, simply the petitioners cannot seek ratification of the amendments, without there being any order permitting amendments by allowing an application filed under Order VI Rule 17 C.P.C.”

A reading of the impugned order would show that, while dismissing the said petition the lower appellate Court held that in case if the amendments are allowed introducing new pleadings, there must be an opportunity to the defendants again to file their written statement with regard to the pleas and as such the entire proceedings would start afresh. Therefore, there is no tenability in the contentions that the proposed amendments would not give rise to any further delay or denova trial. It was further held that just on the ground that a liberal approach must be followed by allowing amendment, the petitioners cannot be permitted to carry out the amendments sought by them at a belated stage. The liberal approach is required to be adopted only in the event of all other aspects being in favour of the petitioners.

The amendments sought are only to change the grammar of the sentences there is no need to allow such amendments.

Further, if the amendments are going to effect the contention of the plaintiff already made, trial proceeded thereon, there is no justification for allowing the amendment. The petitioners already filed I.A.No.784 of 2009 seeking amendment, which was dismissed and against which a revision was also filed before this Court. While dismissing the revision, this Court has not given any positive observation to permit the petitioner to move another application for amendment before the trial Court or the appellate court. In the absence of any such permission, the petitioners

are not entitled to seek amendment. The names of the legal representatives were already incorporated by virtue of the Court orders and as such there is no need to permit the petitioners to make any amendments as sought for. Insofar as remaining changes are concerned, they are identical to one prayed in I.A.No.784 of 2009. Hence this Court finds no illegality in the findings passed in I.A.No.784 of 2009.

For the aforesaid reasons, I do not find any merits to interfere with the impugned order.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

23.03.2016

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[\[1\]](#) AIR 2015 SC 2270