

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Civil Revision Petition Nos.1324 and 1354 of 2016

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COMMON ORDER:

CRP.No.1324 of 2016:-

This revision petition is filed against the order dated 03.02.2016, in IA.No.1303 of 2015 in OS.No.828 of 2006, wherein the Court below dismissed the petition filed by the petitioner/plaintiff, seeking amendment of the plaint.

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CRP.No.1354 of 2016:-

This revision petition is filed against the order dated 03.02.2016, in IA.No.1302 of 2015 in OS.No.827 of 2006, wherein the Court below dismissed the petition filed by the petitioner seeking amendment of the plaint.

2. Though the revision petitioners in both the CRPs are different and filed different suits before the Court below, the issue involved in both the IAs, which were dismissed by the Court below, pertain to amendment of plaint and that the petitioners/plaintiffs filed the IAs on the same ground and that the respondent/defendant in both the IAs is one and the same. As such both the counsel requested to dispose of the CRPs together and hence this Court passed this common order.

3. Heard learned counsel for the petitioner/plaintiff who submits that amendment under Order-6, Rule 17 should be allowed at any stage to avoid multiplicity. In support of his contention he relied on the Judgment in ***Ragu Thilak D.John v. S.Rayappan and others***

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4. On the other hand learned counsel for the respondent/defendant submits that the suit was filed in the year 2006 and the petitioner has taken the plea by filing the present application after waiting for 9 years, that too after completion of arguments; and that the petitioner has not shown any diligence in filing the application and the Court below dismissed application by holding that the petitioner was not diligent enough in seeking amendment earlier. He submits that in his affidavit the petitioner did not explain that he was diligent and inspite of his diligence he could not seek amendment earlier. He also submits that originally the suit was filed with a plea that he came into possession by virtue of oral sale and later a contrary plea was taken that they have perfected title by way of adverse possession and seeking amendment at this belated stage which will cause prejudice to the respondent. He also submits that though the Court can be liberal regarding amendment at pre trial stage, but when once trial commences, the amendment cannot be allowed unless the applicant fulfills the condition as per proviso under Order 6 Rule 17 of the CPC as introduced by Act 22 of 2002. Otherwise, the purpose of amendment will become redundant and otious. He submits that contradictory plea was taken by the petitioner by way of amendment which is not permissible. In support of his contention, he relied on the Judgments in ***Vempalli Srinivasula Reddy v. V.M.Ramakrishna Reddy and others***^[2]; ***Thonduri Changa Reddy v. Chillakuru Chandra Sekhara Reddy***^[3]; ***Brundavan Bisoyi v. Annapurna Bisoyi***^[4]; ***Chappidi Satyanarayanamma and another v. Chappidi Dhanalakshmi and others***^[5]; and ***Kondagani Rajeshwar Rao and another v.***

Gandu Sammaiah ^[6].

5. The petitioner/plaintiff filed suit for declaration and consequential permanent injunction restraining the respondent/defendant from interfering with peaceful possession and enjoyment of the plaint schedule land and for ancillary reliefs. Originally, suits were filed by the petitioner/plaintiffs stating that his father became owner of the petition schedule property having purchased the same from his senior paternal uncle and father of respondent/defendant, by virtue of oral sale in the year 1969 for a valuable consideration of Rs.90/- and took possession of the same. Now the amendment sought is that they have perfected the title by way of adverse possession. The Court below after considering the facts and circumstances of the case by relying on several Judgments, dismissed the application holding that the petitioner sought amendment for introducing a new plea of adverse possession over the plaint schedule property. It is also found by the Court below that as per Order VI Rule 17 of the amended civil procedure code, any amendment should be done prior to the commencement of the trial and that if the party intends to seek amendment at any subsequent stage, then the party has to show that he was diligent enough and inspite of his diligence he could not seek the amendment earlier. The Court below also found that the petitioner did not give any single reason for not seeking amendment earlier and that since the suit is at the stage of arguments, it will cause prejudice to the respondent and it will change the cause of action of the suit also. The conclusions drawn by the Court below are perfectly justified and I see no reason to interfere.

6. The amendment sought in both the IAs which was allowed by the Court below and now is under challenge is as follows:

“Proposed Amendments:

1. At the end of para 10 add the following:

‘The plaintiff submits that he has also alternatively perfected his right and title by way of adverse possession over the plaint schedule property.’

2. At the end of prayer para 15(a) add the following:

“and the plaintiff also perfected his right and title alternatively by way of adverse long possession of 46 years’.

7. The Judgment relied on by the petitioner in ***Pankaja and another v. Yellappa*** ^[7] was rendered in respect of case prior to the amendment of Order-6, Rule-17 in the year 2002. Hence, the amended of Order-6, Rule-17 was not considered by the Supreme Court in the said case. More so, the Apex Court clearly held that Courts discretion depends on the facts and circumstances of the case. Thus the Court below after elaborately considering, rightly, did not exercise its discretion for allowing amendment. As such, the said decision relied on by petitioners is not applicable to the facts of the present case.

8. The decision rendered in ***Ragu Thilak’s case (2001) 2 Supreme Court Cases 472*** was also before amendment of Order-6, Rule-17.

9. In Vempalli Srinivasula Reddy’s case it is held;

“22. It is no doubt true that in the main provision “at any stage” is there and on a careful analysis of the main provision and the proviso introduced by Amendment Act 22 of 2002 it is crystal clear that the said proviso was introduced to check applications of amendment of pleadings, so as to control the procrastination of the proceedings on the said pretext. In the present case long after filing the affidavit in relation to chief-

examination which is permissible under law under the present Code, this application was moved. It is also pertinent to note that similar application was moved and the same was not pressed, whatever may be the reason. It is also pertinent to note that the affidavit relating to the chief-examination is totally silent about this aspect, and hence, it cannot be said that the application is *bona fide* and also it cannot be said that this is subsequent event which had been brought to the knowledge of the petitioner-plaintiff, so as to be assailed by the main provision of Order VI Rule 17 of the Code. The words "in spite of due diligence party could not have raised the matter" indicate yet another condition to be satisfied and unless this condition is satisfied post-trial amendment may have to be viewed with all care and caution. Liberality to be adopted in relation to pre-trial amendments, cannot be stretched too far and cannot be extended in the same vigour to the post-trial amendments too and if the same standard is adopted it would amount to doing violence to the amended provision especially the proviso which had been introduced by the Amendment Act 22 of 2002."

10. In *Thonduri Changa Reddy's case* it is held;

".....Having said so, during the pendency of the appeal, the above amendment was sought for the second time setting up altogether a different case. There was not even a whisper in the original written statement or in the written statement amended for the first time during the pendency of the suit that he was in adverse possession of the suit schedule property and perfected title by adverse possession. For the first time, this application was filed during the pendency of the appeal, which definitely, changes the very nature of the pleadings as well as the assertions and denials made by the parties although the trial in the suit. The pleas based on agreement of sale and adverse possession are mutually inconsistent and the latter does not begin to operate unless former is renounced.

11. In *Brundavan Bisoyi's case* it is held;

“10. As held by the learned Senior Civil Judge, it is a settled principle of law that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounts to denial of his title to the property claimed, that the adverse possession implies that possession commenced in wrong and is materialized against right, i.e., to say if a person is said to be holding the property adverse to the real owner when that person, in denial of the owner’s right, excluded him from the enjoyment of his property. In the case on hand, the petitioner-defendant, in the first instance has denied his relationship with the respondent-plaintiff and that the suit property is his self acquired and ancestral property and he is a rightful owner. Therefore, when the petitioner-defendant pleads that he is the real owner of the suit property, the question of his perfecting the title by adverse possession against the real owner does not arise inasmuch as the claim of adverse possession arises only against a real owner of the property in denial and exclusion of the rights of the real owner. Therefore, if once the petitioner-defendant proves that there is no relationship between himself and the plaintiff, his title to the property is protected and he will be the owner. Therefore, the proposed amendment sought by the defendant is entirely different from the defence taken by him in the written statement and it creates a new cause of action. As stated above, the defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice. No doubt, all amendments to the pleadings should be allowed which are necessary for the determination of the real controversies in the suit, but the proposed amendment does not alter or substitute a new cause of action on the basis of which the original *lis* was raised or defence taken. From the facts and circumstances of the case, it is clear that if the proposed amendment is allowed, it will totally change the nature of the suit giving rise to new cause

of action resulting in substantial prejudice to the plaintiff-respondent herein. Therefore, I do not find any material irregularity or illegality committed by the learned Senior Civil Judge, Sompeta in rejecting the relief of amendment of the written statement and dismissing the I.A.”

12. *In Chappidi Satyanarayanamma’s case it is held;*

“3. There should be a stage for amending the pleadings. Pleadings cannot be amended after the defence counsel has completed his arguments. If the pleadings are now allowed to be amended by one party, the opposite party will have to reframe its defence. It will have to lead evidence afresh and this is one kind of tactics to keep the issue pending rather than allow the same to be decided.

4. Therefore, the prejudice that will be caused to the opposite party is writ large on the record. No separate prejudice need be demonstrated when an attempt is made to get the pleadings amended after the opposite party has concluded his arguments also.”

13. *In Kondagani Rajeshwar’ case it is held;*

“7. It is therefore very clear that unless the court comes to a conclusion that inspite of due diligence, the party seeking amendment could not have raised the plea intended to be taken, it should not allow amendment of pleadings after commencement of trial. First revision petitioner filed his written statement on 12.03.2001, taking a specific plea in para-7 that even if the respondent (plaintiff) or his father had title to the suit property, they lost it by virtue of his adverse possession. When it is the specific case of the revision petitioners that they prescribed title to the suit property by adverse possession, it is clear that there was no jural relationship of landlord and tenant between them. The affidavit filed in support of IA.No.60 of 2003 does not state anything as to how and when the petitioners came to know that the father of the first petitioner was a protected tenant in respect of the suit land. At this stage I feel it relevant to extract Para-1 of the affidavit filed in support of IA No.60

of 2003. It read: “At the time of filing of my written statement, I had not informed my advocate while preparing the written statement, that my father was a protected to the suit schedule property. After the death of my father the property was inherited by me.” Which, if true, means that even by the date of filing of the written statement, revision petitioners were aware that the father of the first petitioner was a protected tenant in respect of the suit property. So, it is clear that even though revision petitioners were aware that the father of the 1st petitioner was the protected tenant in respect of the suit property they chose to take a plea that they have acquired title to the suit property by adverse possession i.e., by prescription. Therefore, it cannot be said that their not taking of the plea of protected tenancy in the original written statement was due to inadvertence. On the other hand it is clear that they deliberately took the plea of adverse possession. Therefore, the proviso to Rule 17 of Order 6 CPC comes into operation and so, I find no ground to interfere with the conclusion of the learned trial Judge that the petition is liable to be dismissed.”

14. The law laid down in the decisions referred to supra apply in all force to the facts of the case and supports the reasoning in the impugned order. In view of above facts and circumstances, I do not find any infirmity in the order dated 03.02.2016, passed by the Court below in IA.No.1303 of 2015 in OS.No.828 of 2006 and IA.No.1302 of 2015 in OS.No.827 of 2006, warranting interference by exercising jurisdiction under Article 227 of the Constitution of India. Accordingly, both the CRPs are dismissed with costs.

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

A.RAJASHEKER REDDY, J

18.03.2016

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[\[1\]](#) (2001) 2 Supreme Court Cases 472
[\[2\]](#) 2006(1) ALT 160
[\[3\]](#) 2006(1) ALT 175
[\[4\]](#) 2001(5) ALT 15
[\[5\]](#) 2014 (5) ALT 774
[\[6\]](#) 2003(3) ALT 516
[\[7\]](#) (2004) 6 Supreme Court Cases 415