

***HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+CIVIL REVISION PETITION No.4488 OF 2016

%27.12.2016

Veerisetty Venkata Subba Rao

..... Petitioner.

And

Bogala Gangadhara Reddy and another

.....Respondents

! Counsel for the petitioner:

Sri R. Radha Krishna Reddy

^ Counsel for respondents :

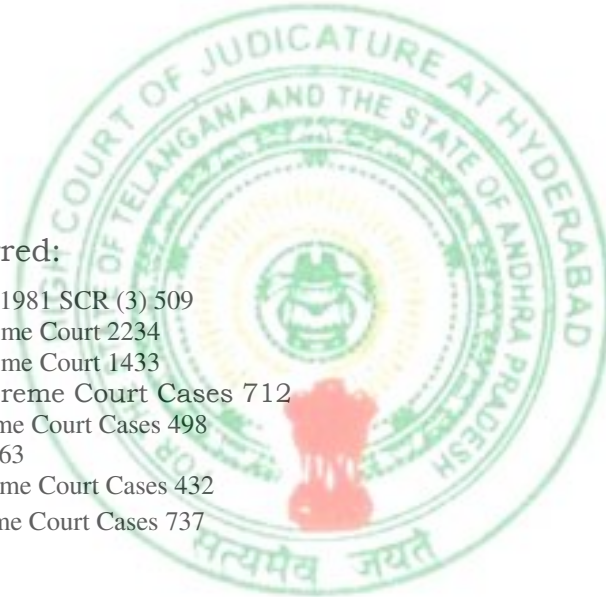
Sri P. Gangarami Reddy

< Gist:

> Head Note:

? Cases referred:

1. 981 AIR 1400 / 1981 SCR (3) 509
2. AIR 2008 Supreme Court 2234
3. AIR 2009 Supreme Court 1433
4. (2000) 1 Supreme Court Cases 712
5. (2006) 6 Supreme Court Cases 498
6. 2003 (3) ALD 363
7. (2004) 13 Supreme Court Cases 432
8. (2007) 6 Supreme Court Cases 737



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4488 of 2016

ORDER:

The plaintiff is the petitioner before this Court challenging the order dated 01.08.2016 in I.A.No.317 of 2014 in O.S.No.14 of 2001 passed by the learned VI Additional District Judge, Nellore.

2) The facts are not in dispute. It is the case of the plaintiff that he became entitled to recovery of the suit schedule claim monies on account of assigning / transfer of the interest in the pronotes and other documents executed in favour of the two firms viz., M/s. Raghavendra Enterprises and M/s. Sri Kamakshi Commercial Finance Corporation, as such he filed a suit in O.S.No.14 of 2001 on the file of VI Additional District Judge, Nellore for recovery of money based on mortgage of property of defendants 2 to 5. Originally, the suit money was borrowed by the 1st defendant firm and defendants 2 to 5 are the partners. The evidence was closed and the matter was posted for arguments on 30.10.2014. At that stage I.A.No.317 of 2014 was filed by the defendants seeking to amend the Written Statement by inserting the following two paragraphs, which reads as under:

“(30) (b): the Plaintiff is not entitled to claim the suit amount in view of the fact that the Plaintiff claimed specific performance of the agreement of sale of the Plaintiff schedule property from the Second Defendant and caused a notice dated 22.09.2010 calling upon the Second Defendant to receive a sum of Rs.17,13,000-00 being the balance of sale consideration after giving credit of the suit claim arrived at Rs.13,87,000-00 and execute a registered sale deed in his favour in respect of the suit schedule property in pursuance of the terms of memorandum of understanding in lieu of an agreement of sale dated 30.08.2006 allegedly executed by the Second Defendant in his favour. In view of the demand made by the

Plaintiff under the alleged agreement of sale dated 30-08-2006, the suit claim was allegedly given credit towards the part of the total sale consideration of Rs.32,00,000-00 as claimed in the notice dated 22-09-2010 by the Plaintiff to the Second Defendant, which claim of the Plaintiff was denied by way of reply notice dated 12.10.2010.

(30)(c): In view of the demand notice dated 22.09.2010 caused by the Plaintiff to the Second Defendant, whereunder the plaintiff claimed that the suit amount was given credit and discharged towards part of the alleged total sale consideration of Rs.32,00,000-00 in respect o Item No.1 and 2 of the Plaint schedule properties, as per the terms of the alleged agreement of sale dated 30.08.2006, the Plaintiff is not entitled to the suit claim as the same was discharged according to the Plaintiff and the remedy for the Plaintiff as to his claim under the alleged agreement of sale dated 30.08.2016 is elsewhere.”

3) It is the case of the defendants that the plaintiff had issued a legal notice dated 22.09.2010 (EX.B.1) calling the defendants to execute a sale deed in their favour with respect to the suit schedule properties. In the legal notice, plaintiff had given credit to certain amounts and agreed to pay the balance amount of Rs.17,13,000/- and called upon the defendants / respondents to execute the sale deed. The said legal notice was replied by the defendants denying the execution of the sale agreement dated 30.08.2006. The legal notice issued by the plaintiff and the reply legal notice issued by the defendants were brought on record in the process of cross-examination of P.W.1 on 21.06.2011, who admitted about the issuance of Ex.B.1-legal notice, dated 22.09.2010. The defendants / respondents had handed over Ex.B.1 legal notice and the reply notice dated 12.10.2010 to their counsel in 2010 itself and they were under impression that their advocate would take appropriate steps to bring the same on record

by taking appropriate pleas. It is only the mistake on the part of the advocate and as such the amendment being crucial providing as an additional defence in support of their stand in the suit, the amendment had become necessary and the same may be allowed. The amendment sought was resisted by the plaintiff/petitioner. The Court below i.e., learned VI Additional District Judge, Nellore, had allowed the same accepting the plea of the defendants/respondents. Challenging the same, the present Civil Revision Petition is filed.

4) Heard the learned counsel for the petitioner Sri R. Radha Krishna Reddy and the learned counsel for the respondent Sri P. Ganga Rami Reddy.

5) Order VI Rule 17 of the Civil Procedure Code (in short “CPC”) deals with the powers of the Court to amend the pleadings by either of the parties, which reads as under:

“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 inspite of due diligence, the party could not have raised the matter before the commencement of trial.”

(i) The scope and ambit of the Order VI Rule 17 of CPC was subject matter of a large number of judgments and it is not necessary for this Court to refer to the same. Suffice it to say that the Courts have held that in normal circumstances the

amendment of pleadings may be permitted at any stage, provided the same are necessary for the purpose of determining the real questions in controversy between the parties.

(ii) However, no amendment shall be allowed after commencement of trial 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 the trial.

(iii) That the party seeking amendment should satisfy the Court that the said amendment could not be raised earlier before commencement of the trial.

6) Reference may be made to the judgments cited by both the petitioner as well as the respondents:

Cases referred by the learned counsel for the petitioners:

- i) Rafiq & Another *v* Munshilal & Another¹
- ii) Chander Kanta Bansal *v* Rajinder Singh Anand²
- iii) Vidyabai and Ors. *v* Padmalatha and Another³

Cases referred by the learned counsel for the respondents:

- i) B.K. Narayana Pillai *v* Parameswaran Pillai and Another⁴
- ii) Baldev Singh and Others *v* Manohar Singh and Another⁵
- iii) E. Prasad Goud *v* B. Lakshmana Goud⁶
- iv) Pradeep Singhvi and Another *v* Heero Dhankani and Others⁷
- v) Ramchandra Sakharan Mahajan *v* Damodar Trimbak Tanksale (Dead) and others⁸

¹ 1981 AIR 1400 / 1981 SCR (3) 509

² AIR 2008 Supreme Court 2234

³ AIR 2009 Supreme Court 1433

⁴ (2000) 1 Supreme Court Cases 712

⁵ (2006) 6 Supreme Court Cases 498

⁶ 2003 (3) ALD 363

⁷ (2004) 13 Supreme Court Cases 432

⁸ (2007) 6 Supreme Court Cases 737

7) In the facts of the present case, it may be noticed that the suit is filed for recovery of money based on mortgage documents. As on the date of filing of the application for amendment recording of evidence was completed. There was no mention about the Ex.B.1 document or the reply notice in plaint and the plaintiff/petitioner did not seek enforcement of the alleged agreement of sale, execution of which was denied by the defendants. The defendants were all through from 2010 were aware of the existence of both the documents and the said documents were in their possession and as a matter of fact the agreement for sale claimed in Ex.B.1 Notice dated 22.09.2010 denied by the defendants, and the only explanation for not seeking amendment earlier, at least immediately after completion of the cross-examination on 21.06.2011, is that the negligence on the part of the advocate, which was accepted by the Court below stating that inaction on the part of the advocate should not prejudice the rights of the parties. Though the said plea was accepted by the Court below based on the judgment of the Supreme Court reported in **Rafiq & Another case** (1 supra), a close scrutiny of the said judgment reveals that in the said case, the appeal was disposed of by the High Court in the absence of the appellant counsel, a recall application was filed and the said recall application was dismissed on the ground that though the affidavit seeking recall was drafted and sworn on 29.1.1980 the same was not filed in the Court till 12.11.1980, which was construed as slackness on the part of the party. In those fact circumstances, the Hon'ble Supreme Court allowed the application with the observations that the mistake on the part of the Lawyer shall not prejudice the interest of the client. In the

present case, expect putting blame on the Advocate, there is no other material to come to the conclusion that the defendants/respondents had sufficient cause for not seeking the amendment until the completion of the trial. Though, it is the contention of the respondent counsel that no prejudice will be caused to the plaintiff/petitioner and the defendants/respondents are entitled to take inconsistent pleas to support their case as held by the Supreme Court in **Baldev Sing case** (5 supra), in the present case, allowing of the amendment would change the very complexion of the suit, especially considering the fact that in the suit the plaintiff did not claim specific performance of the alleged sale agreement dated 30.08.2006, which in fact was denied by the defendants vide their reply notice. It appears from the application filed by the respondents, they were under impression that the suit is filed seeking specific performance which is evident from para No.11 of the affidavit filed in support of I.A.No.317 of 2014 in O.S.No.14 of 2001, which is as follows:

“(11) I submit that the amendment to my written statement is warranted in view of the change of stand taken by the Respondent in his claim in appropriating the suit amount towards the alleged sale consideration of the alleged agreement of sale dated 30.08.2006 under reference Exhibit B.1”

8) Further, it may also be noticed that in the judgment of the Supreme Court in **Baldev Sing case** (5 supra) at Para 17, it was categorically mentioned that the trial had not commenced in the said case and as a matter of fact, this case was distinguished by the Supreme Court in later judgment in **Vidyabai and Ors.** (3 supra) at Para 12. In the facts of the present case, there was no

due diligence on the part of the defendants in seeking amendment and there is no explanation to the same except putting blame on the advocate. Further, there is no explanation why this plea could not have been taken at the earliest point of time. Inasmuch as, the learned Judge failed to take into consideration of the crucial aspect of due diligence on the part of the defendants in seeking amendment and further the explanation offered being not convincing, merely because the amendment may help the defendant as one more defense for defeating the claim of the petitioner/plaintiff, the amendments cannot be allowed and the very purpose of amendment to the C.P.C under Order VI Rule 17 would be defeated. In the facts of the present case, notwithstanding the very persuasive argument of the learned counsel for the respondents, I am unable to sustain the order under revision.

9) Accordingly, the Civil Revision Petition is allowed setting aside the order dated 01.08.2016, passed by the VI Additional District Judge, Nellore, in I.A.No.317 of 2014 in O.S.No.14 of 2001. There shall be no order as to costs. Consequently, the Miscellaneous Petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J.

Date:27.12.2016,

Note:

1. L.R copy to be marked.
2. Issue CC forthwith.

B/o.

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM



CIVIL REVISION PETITION No.4488 of 2016
Date: 27.12.2016

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