

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CIVIL REVISION PETITION No.4955 of 2011

ORDER :

The plaintiff in O.S. No.47 of 2004 on the file of Junior Civil Judge, Venkatagiri of Nellore District who filed the suit against five defendants, for the relief of permanent prohibitory injunction claiming the threatened interference by defendants with the plaintiff's possession, from the written statement filed by the defendants including from the counter of late 1st defendant Narapa Reddy contending that the plaint schedule property does not belong to plaintiff, that it is the Anadheenam as per the revenue classification and the same was assigned to the plaintiff and while assigning the plaintiff was not in possession as deceased Narayana Reddy @ Narapareddy was in possession and pursuant to the grant of patta to the plaintiff by Government he was not put in possession, plaintiff who went unsuccessful pending suit in the temporary injunction sought for in I.A. No.85 of 2004 and also on appeal against it in C.M.A. No.20 of 2004, plaintiff thereby sought for amendment of the plaint reliefs including in valuation for the purpose of Court Fees and jurisdiction from permanent prohibitory injunction relief to the relief of declaration and possession in I.A. No.107 of 2008.

2) The plaintiff's affidavit averments in support of the amendment suit that in the suit filed for permanent injunction sought for temporary injunction that was dismissed on 01.10.2004 holding plaintiff failed to prove possession and enjoyment of the suit property including from plaintiff's representation before revenue authorities of the 1st defendant occupied the disputed property and the C.M.A also confirmed by dismissal and the sole defendant Narayana Reddy @

Narapa Reddy pending suit died and the 2nd defendant Subba Reddy as legal representative brought on record (also died and the other defendants 3 to 5 added as legal representatives of the 2nd defendant in I.A. No.16 of 2010 dated 01.06.2010 during pendency of this amendment application), that trial is not yet commenced in the suit and he is advised to avoid multiplicity of proceedings to seek for the efficacious relief of declaration and possession of the plaint schedule property and thereby seeking the consequential amendments pursuant to which in plaint page No.5 first line on the value and in page No.5, 12th line on the reliefs column and in page No.5, para No.8 also consequently by correction and amendment of the valuation and prayer portions from the factual matrix supra.

3) The counter filed by the sole defendant Narapa Reddy since died and his legal representative the 2nd defendant brought on record also since died and the legal representatives 3 to 5 brought on record therefrom contested also with reference to statement of him of the land is classified as ancestral and Anaadheenam and even assigned to the plaintiff by Government possession was not handed over to the plaintiff from the 1st defendant pursuant to the patta in favour of the plaintiff granted by Government and thereby the question of declaration of title and possession reliefs to amend for the assigned land does not arise and if at all there is any dispute with regard to the assigned land remedy is to agitate before the revenue authorities like Mandal Revenue Officer with right of appeal like before Sub-Collector and for the amendment of the relief the Court has no jurisdiction and thereby sought for dismissal.

4) The trial Court in dismissing the application observed that the plaintiff wanted to amend the plaint from injunction to declaration and possession relying upon ***Sampath Kumar V. Ayyannu***^[1] of two

judges bench of the Apex Court and the facts in that expression are different to the present facts and plaintiff went unsuccessful in getting temporary injunction including in the miscellaneous appeal against it for not in possession and reliefs to amend are thereby not maintainable and consequently dismissed.

5) It is impugning the same present revision is filed. The learned counsel for the revision petitioner contents that the order of the lower Court is illegal, baseless, devoid of merits, with no any reasons to sustain and is therefore liable to be set aside by allowing the revision for permitting the amendment sought for covered by the impugned order and placed reliance on the same expression of ***Sampath Kumar*** supra.

6) Whereas, it is the contention of the learned counsel for the respondents/defendants 3 to 5 as legal representatives of late 1st respondents 1 and 2 as referred supra that the trial Court is right in dismissal for cloud on the title of plaintiff and not even in possession apart from proposed amendment changes the nature of suit relief and cause of action and prejudice the rights and contest of the defendants and thereby sought for dismissal of the revision.

7) Heard at length and perused the material on record.

8) Undisputedly from the averments referred supra, Government assigned the revenue classified Anaadheenam land supra covered by the plaint schedule to the plaintiff. It is the contest of late sole defendant in possession and no possession delivered pursuant to the patta by Government to plaintiff muchless from sole defendant (1st defendant) and after the 1st defendant by the 2nd defendant and after him by the other defendants 3 to 5 are in possession of the property. In fact once plaintiff could not succeed in getting temporary injunction from the original pleading apart from the

injunction suit is not a bar if at all even dismissed on merits if not even for default leave about any leave to withdraw to file fresh suit to invoke for the efficacious relief of declaration of title despite undisputedly patta for the suit land in favour of the plaintiff, from possession held with defendants in the temporary injunction dismissal order confirmed in appeal, there is no prejudice that could be caused to the defendants from the amendment sought for, that too in the suit trial undisputedly not yet commenced, for any requirement of showing due diligence as per the amended order VI Rule 17 C.P.C. The other contention of it changes the nature of defence or cause of action or nature of suit is untenable but for nature of reliefs and its entitlement or otherwise, if any. In fact what the Apex Court in ***Sampath Kumar*** supra held referring to earlier expression in ***Siddhalingamma V. Mamtha Shenoy***^[2] of the amendment sought, from bare injunction (prohibitory) by claiming in possession, original suit filed with that relief, to the reliefs of declaration of title with consequential relief of possession, it does not alter the nature and structure of suit but for change of relief and once the plaintiff is found entitled to file an independent suit for declaration of possession, the incorporation of the same from the amendment sought for to convert the suit from bare injunction to declaration and possession has to be allowed to avoid multiplicity of litigation, rather denial of amendment sought, that too more liberally at the pre-trial stage though not at the post trial stage. The trial Court thus went wrong in saying the decision and the principle laid down therein have no application to the facts and in dismissing the amendment. The order of the lower Court is thereby unsustainable and no way stand to reason.

9) Having regard to the above, the revision is allowed setting aside the impugned order dated 06.09.2011 in I.A. No.107 of 2008 in O.S. No.47 of 2004 on the file of Junior Civil Judge, Venkatagiri and

by allowing the application before the trial Court granting the amendment sought for with any consequential amendment to the plaint, which is without prejudice to the right of the defendants to file any additional written statement. There shall be no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

03.02.2016

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[\[1\]](#) 2002(9) SRJ 198

[\[2\]](#) (2001)8 SCC 561