THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.3957 of 2016

ORDER:

Aggrieved by the order dated 15.07.2016 in I.A.No.79 of 2016 in O.S.No.42 of 2005 passed by the Junior Civil Judge, Railway Kodur, dismissing the petition filed under Order VI Rule 17 CPC, the petitioner/plaintiff filed the instant CRP.

2 a) The petitioner filed the above suit for perpetual injunction initially against 1st respondent/1st defendant on the plea that the suit property is his ancestral property and 1st respondent whose surname is also same as that of his great grandfather Patra Chenchaiah, tried to take advantage of the same and attempting to interfere with the suit property. Subsequently, he filed I.A.No.184 of 2013 to add 2nd respondent/2nd defendant on the ground that 1st respondent sold the suit property to the 2nd respondent. Thereafter he filed I.A.No.79 of 2016 seeking permission to amend the plaint and to add the reliefs of declaration of his title and for cancellation of the sale deed dated 23.01.2013 executed by 1st respondent in favour of 2nd respondent.

b) The respondents filed counter counters and opposed the amendment sought for.

c) The trial Court after enquiry dismissed the petition on the main ground that the reliefs of declaration as well as cancellation of sale deed dated 23.01.2013 were both barred by limitation.

Hence the instant CRP.

3) Heard arguments of Sri K. Chidambaram, learned counsel for petitioner and Sri M.S.P.Kama Raju, learned counsel for 1st respondent. Notice to 2nd respondent was served but there is no representation on his behalf. With the consent of learned counsel for petitioner and learned counsel for 1st respondent, this CRP is disposed of at the admission stage.

4) Impugning the order under revision, learned counsel for petitioner would contend that since 2nd respondent purchased the suit property from 1st respondent under sale deed dated 23.01.2013 pending the suit, the trial Court ought to have allowed the amendment and permitted the plaintiff to introduce the reliefs of declaration and cancellation of sale deed dated 23.01.2013 in order to avoid multiplicity of proceedings and such amendment would not cause any injury to the respondents. Learned counsel further argued that undoubtedly his earlier application in I.A.No.234 of 2011 seeking amendment of the plaint and introduction of declaratory relief was dismissed but the said dismissal would not come in the way of present application and operate as *res judicata* because the cause of action in I.A.No.234 of 2011 was different and present cause of action is different inasmuch as the present cause of action was based on the sale deed executed by 1st respondent in favour of 2nd respondent. He thus prayed to allow the CRP.

5) Per contra, learned counsel for 1st respondent while supporting the impugned order would argue that earlier the petitioner filed I.A.No.234 of 2011 to amend the plaint and introduce relief of declaration and the

said petition was dismissed and aggrieved, the petitioner filed CRP No.1940 of 2012 and the same was also dismissed by the High Court holding that inspite of defendant denying the title of the plaintiff in his written statement filed in the year 2003, the plaintiff did not file amendment petition seeking the declaration of his title till 2011 and hence there were no merits in the revision. As such, he would argue, the instant petition under revision for the same relief is not maintainable on the principle of *res judicata* and therefore, the trial Court rightly dismissed the amendment petition. Even the other relief for cancellation of the sale deed was also held to be not maintainable as the relief sought to be introduced was also barred by limitation. Learned counsel vehemently argued that the order impugned was legally perfect and there is no need to revise the same.

6) In the light of above rival arguments, the point for determination is:

"Whether there are merits in the revision to allow?"

7) **POINT**: Admittedly, the petitioner earlier filed I.A.No.234 of 2011 under Order VI Rule 17 CPC seeking permission to amend the plaint to introduce the relief of declaration and the said application was dismissed by the lower Court. Feeling aggrieved, the petitioner filed CRP No.1940 of 2012 and by order dated 24.04.2012, the High Court dismissed the said application with the following observation:

> *"From the facts noted above, the fact that the respondent has denied the title of the petitioner was within the knowledge of the petitioner when the written statement was filed by the*

respondent in the year 2003. Much water has flown under the bridge since then. The petitioner never bothered to file an application for amendment, even though the evidence was commenced and closed on 17.08.2007. He has not sought for amendment at least when he filed the applications for his recalling and marking of two documents. He allowed the evidence to be closed twice. After completion of the arguments on his side, following the closure of the evidence for the second time, the petitioner has come out with this application. In my opinion, the sheer conduct of the petitioner does not entitle him to maintain such application at the belated stage, even though he had sufficient time to file such an application at earlier stages. For the abovementioned reasons, I do not find any error, jurisdictional or otherwise in the order of the lower Court."

8) Citing the above order, the trial Court dismissed I.A.No.79 of 2016. Regarding the declaratory relief, it observed that the petitioner is estopped from filing similar application. Sofaras the relief of cancellation of the sale deed dated 23.01.2013 is concerned, the trial Court observed that the petitioner knew about the sale deed executed by 1st respondent in favour of 2nd respondent even by the date of his filing I.A.No.184 of 2013 to bring on record the 2nd respondent/2nd defendant, who is the purchaser under sale deed dated 23.01.2013 and in that view, he ought to have filed the amendment petition to introduce the relief of cancellation of sale deed dated 23.01.2013 within three years from the date of sale deed and hence the said relief cannot be permitted to be introduced now.

9) Thus in essence, the trial Court dismissed the amendment petition on the ground that both the reliefs of declaration and cancellation of sale

deed dated 23.01.2013 were barred by limitation. Hence the pertinent question is whether an amendment petition can be dismissed when the relief(s) sought to be introduced by way of amendment is barred by limitation. This aspect is no more *res integra*. In similar circumstances, in the case of ***L.C.Hanumanthappa vs. H.B.Shivakumar***[1], Hon'ble Apex Court basing on the facts to the effect that the defendant in his written statement dated 16.05.1990 denied the title of the plaintiff but the plaintiff sought to amend the plaint seeking the relief of declaration on 01.05.2002 but his right to seek declaration of title became time barred even by 16.05.1993 and the doctrine of relation back would not apply to such cases as the legal right that had accrued in favour of defendant would be taken away, approved the judgment of the High Court. Thus from the above judgment it would emerge that when the reliefs sought for by way of amendment are manifestly barred by law of limitation, Court can refuse the amendment. However, if there is an element of doubt about the bar of limitation, the Court can allow the amendment declaring it subject to limitation and without applying the doctrine of relation back.

10) In the instant case, the declaratory relief is concerned, this Court in CRP No.1940 of 2012 abundantly made it clear that inspite of 1st defendant denying plaintiff's title in his written statement way-back in the year 2003, the plaintiff did not file amendment till 2011 and hence the conduct of the petitioner disentitle him to maintain such application at the belated stage. In I.A.No.79 of 2016 also the petitioner seeks the

[1] AIR 2015 SC 3364

relief of declaration akin to I.A.No.234 of 2011. Though the petitioner claims that the cause of action in both the petitions is different, he could not establish the same. So the relief of declaration is concerned, it is barred by limitation as well as by the principle of *res judicata* also. Then the relief of cancellation of sale deed dated 23.01.2013 is concerned, the same must also be held to be barred by limitation. The petitioner filed I.A.No.184 of 2013 to bring on record the 2nd respondent/2nd defendant being the purchaser of the suit property and the same was allowed. Therefore, as rightly observed by the trial Court, the petitioner had knowledge about the sale deed dated 23.01.2013. Inspite of it, the petitioner did not file the amendment to seek relief of cancellation of the sale deed within three years from the date of sale deed. Hence the amendment cannot be introduced now. So at the outset, the order impugned does not suffer any legal infirmity.

11) In the result, this Civil Revision Petition is dismissed by confirming the order in I.A.No.79 of 2016 in O.S.No.42 of 2005 passed by the Junior Civil Judge, Railway Kodur. No costs.

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

U. DURGA PRASAD RAO, J

Dt. 09.12.2016
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