

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2836 of 2015

ORDER:

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This Civil Revision Petition by the unsuccessful petitioners/plaintiffs under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) is directed against the order dated 08.06.2015 of the learned Senior Civil Judge, Penukonda of Anantapur District passed in I.A.no.674 of 2014 in O.S.no.50 of 2009 filed under Order VI Rule 17 of the Code read with Rule 28 of the Civil Rules of Practice requesting to permit the plaintiffs to amend the plaint to incorporate the relief of recovery of possession alternatively to enable them to claim the said relief, in case the Court comes to the conclusion and finds that the defendants are in possession of the suit schedule property.

2. I have heard the submissions of the learned counsel for the petitioners/plaintiffs ('the plaintiffs', for brevity) and the learned counsel for the respondents/defendants ('the defendants', for brevity). I have perused the material record.

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3. The facts, which are necessary to be stated as a prelude, in brief, are as follows:

The plaintiffs brought the suit against the defendants for declaration of title and consequential injunction in respect of Ac.31.10 cents of land Bukkapatnam village fields of Vemuletipalli of Kodapaganipalli Gram Panchayat limits of Anantapur, more fully described in the schedule annexed to the plaint. The defendants are resisting the suit. After the trial had made some progress and when the trial is at the stage of adduction of further evidence on the side of the defendants, the plaintiffs had filed the present application for amendment of the plaint to permit them to seek an alternative relief of recovery of possession. The said petition, on resistance by the defendants, was dismissed by the trial Court, by the impugned order. Therefore, the plaintiffs are before this Court.

4. In support of the request for amendment, the case of the plaintiffs, in brief, is this:

The defendants, in their written statement denied the title of the plaintiffs to the suit schedule property. During trial, the defendants have requested to send for the documents from the revenue authorities and examine the revenue authorities and mark certain documents, which according to the plaintiffs are manipulated. Some of such revenue records, which according to the plaintiffs are manipulated, disclose that the defendants are in possession of the property. Therefore, whether the defendants are in possession or the plaintiffs are in possession is a controversy to be adjudicated finally in the *lis* on appreciation of evidence. In the circumstances, the plaintiffs are advised to amend the plaint to incorporate the plea of recovery of possession as an alternative relief. If the amendment is permitted, no loss or hardship would be caused to the defendants and on the other hand, it would be helpful in adjudicating the *lis* finally and will set at rest the controversy. The alternative relief now being sought by way of amendment is not barred by law of limitation.

5. The case of the defendants, who are resisting the said application, in brief, is this:

The amendment application is filed at a belated stage, when the trial is in progress. The plaintiffs did not indicate in their proposed amendment as to when they have lost their possession. The suit is filed with false allegations to defeat the decree that was obtained by the defendants in O.S.no.32 of 1985 and to deprive them of their right to the cart track in sy.nos.6, 5, 2 and 4. The plaintiffs have suppressed the existence of the decree in the former suit. The lands in question are shortrium lands and the same are in possession and enjoyment of Narapareddigari families since a very long time and the said family members are paying the land revenue. One Narapareddigari Narasimha Reddy and five others had sold Ac.5.41 cents in Sy.no.1 and Ac.6.70 cents in Sy.no.3 along with other lands for consideration to the father of the 1st defendant under a sale deed dated 31.03.1969 and the father of the 1st defendant was put in possession by virtue of the said sale

transaction and that the defendants are only in possession of the said lands. Therefore, the application is not maintainable and is liable to be dismissed.

6. The learned counsel for the plaintiffs while making submissions in line with the case of the plaintiffs had reiterated that the amendment of the plaint was sought mainly to avoid multiplicity of litigation and that the trial Court erred in dismissing the application by simply observing that the plaintiffs had failed to plead as to when they had lost their possession and that the decisions relied upon by the learned counsel for the plaintiffs are not applicable to the facts of the case and that the plaintiffs are not entitled to take inconsistent stands and that the amendment cannot be allowed once the trial had commenced. He had placed reliance on a decision in **Vasa Soma Sundara Andal Sampoorja Saraswathi v. Konduru Loka Viswa Appala Naga Sri Ranga Venu Bhaskara Rao**^[1].

7. On the other hand, the learned counsel for the defendants while supporting the orders of the Court below by placing reliance on the proviso to Order VI Rule 17 of the Code, which was introduced (Act 22 of 2002) with effect from 01.07.2002, had contended that once the trial had commenced, the plaintiffs are not entitled to seek amendment of the plaint and that unless the jurisdictional fact that the plaintiffs could not seek the amendment earlier despite due diligence, is established, the amendment cannot be permitted and that the application filed for amendment is not *bona fide* and that the plaintiffs cannot be permitted to take inconsistent pleas. In support of his contentions, he had placed reliance on the following decisions:

(i) **Polishetty Lurdamma (died) and others v. Kunday Mallaiah (died) and others**^[2]

(ii) **J.Samuel v. Gattu Mahesh**^[3]

8. I have given earnest consideration to the facts and submissions. I have gone through the precedents cited.

8.1 To begin with, it is to be noted that the law is well settled that a plaint,

which is filed for declaration of title and consequential injunction can be permitted to be amended to incorporate the plea of recovery of possession if the facts of the case so warrant and there is no legal impediment for granting such a relief. Be that as it may. Dealing first with the aspect regarding the embargo in the proviso contained in Order VI Rule 17 of the Code, it is necessary to reproduce Order VI Rule 17 of the Code, which reads as follows:

17. 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 in spite of due diligence, the party could not have raised the matter before the commencement of trial.

In view of the above proviso, what is to be noted is that according to the plaintiffs, during the course of the evidence, for the first time, the defendants have sent for certain documents and marked them through revenue officials and that the plaintiffs are contending that the said records are manipulated and that in view of the subsequent event, namely, adduction of evidence for the first time by summoning revenue officials and certain revenue records, it has become necessary for the plaintiffs to seek amendment and introduce the alternative relief of recovery of possession for abundant caution and to enable them to seek recovery of possession and avoid the consequence of the dismissal of the suit for not seeking the said relief, in case, on the analysis of evidence at an appropriate later stage, the Court below comes to the conclusion that the defendants are in possession. The purpose of seeking the amendment, according to the plaintiffs, therefore, is that the plaintiffs shall not be non-suited and shall be granted the relief of recovery of possession, if they are otherwise entitled to the said relief. Therefore, the amendment sought for by way of abundant caution is necessary in the facts and circumstances of the case.

8.2 It is no doubt true that unless the jurisdictional fact is established, an amendment cannot be permitted. That is the import of the two decisions relied upon by the learned counsel for the defendants. In the decision on **J.Samuel** (2nd supra), the facts disclose that the amendment was sought on the ground that the amendment was necessitated because of a typographical mistake that had occurred while drafting the pleadings. The Court on facts found that such a contention cannot be accepted in the facts and circumstances of the case. In the very decision, the Supreme Court had held as follows: “However, the proviso restricts that power once the trial has commenced. Unless the Court satisfies that there is a reasonable cause for allowing the amendment, normally the court has to reject such a request.” Therefore, now it is to be examined as to whether or not the jurisdictional fact is established and whether or not there is a reasonable cause for permitting the plaintiff to amend the plaint.

8.3 In the case on hand, the plaintiffs have not given up their original stand in the plaint that they are in possession of the property. However, as already noted, they are seeking the alternative relief in view of the subsequent event, namely, the summoning of revenue officials by the defendants and also certain documents from the revenue authorities and adduction of further evidence by marking certain revenue records, which according to the plaintiffs, are manipulated. The said fact that certain evidence in the form of revenue records which *ex facie* show the possession of the plaintiffs over the plaint schedule property was adduced by the defendants by summoning revenue officials and certain revenue records and exhibiting the same prompted the plaintiffs to entertain apprehension that their suit may be dismissed for not seeking the relief of recovery of possession in case the Court below, on the analysis of such evidence at an appropriate stage comes to the conclusion that the plaintiffs are not in possession. Since the plaintiffs have not given up the original stand in the plaint and are seeking the alternative relief of recovery of possession for abundant caution in view of the above stated facts and subsequent events, it can safely be concluded that the embargo enshrined in the proviso does not come in the way of granting the

relief to the plaintiffs. As a sequel, it must be held that there is a reasonable cause for the plaintiffs seeking the amendment of plaint to introduce the alternative relief of recovery of possession. Be that as it may.

8.4 Now, the next question is as to whether the plaintiffs can be permitted to take inconsistent pleas. On this aspect, the law is well settled. In **Praful Manohar Rele v. Krishnabai Narayan Ghosalkar**^[4], the Supreme Court had followed the three-Judge Bench decision in **Firm Srinivas Ram Kumar v. Mahabir Prasad**^[5] and the decision in **G.Nagamma v. Siromanamma**^[6] and reiterated the principle that alternative and inconsistent pleas can be taken by a plaintiff.

8.5 In the case on hand, the plaintiffs stated that they are in possession of the property. The defendants are now contending that they are in possession of the property while denying the title of the plaintiffs. In any event, the alternative relief now being sought to be introduced by the plaintiffs by way of amendment is based on the plea of the defendants that they are in possession of the property and if such an alternative plea, which the plaintiffs now seek to introduce is permitted to be introduced, though, it is consistent with the original plea of the plaintiffs, it is not inconsistent with the pleadings because the plaintiffs are not changing the nature of the pleadings; further, as the alternative plea being sought to be introduced by way of proposed amendment is in line with the contention of the defendants, no prejudice would be caused to the defendants, if amendment is permitted. Therefore, the Court below is not precluded from allowing the amendment. Therefore, this Court finds that there is a reasonable cause for seeking amendment of plaint and that the jurisdictional fact is also established. Accordingly, this Court finds that the plaintiffs can be permitted to amend the plaint to introduce the alternative plea though inconsistent with the original plea as the same would not cause any prejudice to the defendants as they have pleaded that they are in possession of the suit schedule property. While dealing with the amendment application, it is not open for the Court below to go into the correctness of the plea by the plaintiffs in the application for amendment and

express an opinion thereon. Such a course is impermissible under law. The observations made by the Court below in the order impugned to the effect that jurisdictional fact is not established and that after the trial has commenced, the instant amendment application is not maintainable and that the amendment is not *bona fide* and is intended to introduce new cause of action are unsustainable in the facts and circumstances of the case and the legal position obtaining. Viewed thus, this Court finds that the order impugned calls for interference.

9. In the result, the Civil Revision Petition is allowed and the impugned order dated 08.06.2015 is set aside. Consequently, I.A.no.674 of 2014 is allowed. The Court below is directed to permit the plaintiffs to amend the plaint as prayed for in the said application. Considering the fact that the suit is of the year 2009, the trial Court shall give an opportunity to the defendants to file their additional written statement, if any, and then frame the necessary additional issue/s and then proceed with the trial as expeditiously as possible. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

14th March, 2016

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[1] 2015 LAW SUIT (Hyd) 663 = 2015 (1) ALT 116

[2] 2016 (1) ALT 232

[3] (2012) 2 Supreme Court Cases 300

[4] 2014 (2) ALD 149 (SC)

[5] 1951 AIR (SC) 177

[6] 1996 (2) SCC 25