

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NO.1526 OF 2011

Date: 07.09.2017

Between:

Nakka Veeranna s/o Apparao, Aged 41 years,
Occu: Cultivation, R/o Repuru, Kakinada Rural
Mandal, East Godavari District.

.....Petitioner/petitioner/
plaintiff

and

Chavvakula Govindu, S/o.Sathiraju,
Aged about 68 years, R/o D.No.1-69, Repuru,
Kakinada Rural Mandal, East Godavari District
and others.

.....Respondents/respondents/
defendants



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.1526 OF 2011

ORDER:

Heard learned counsel for petitioner and learned counsel for respondents.

2. Petitioner is the plaintiff in the suit. Plaintiff filed O.S.No.156 of 2005 on the file of I Additional Senior Civil Judge, Kakinada, for declaration of title over the plaint schedule property and for grant of perpetual injunction restraining the defendants and their men from interfering with the possession of the plaintiff. Contending that defendants were making false claim of possession of the plaint schedule property, petitioner filed I.A.No.573 of 2010 praying to amend the plaint by including paragraph-7(a) after paragraph-7 and substitution of paragraphs 9 and 10 with new paragraphs and to grant alternative relief of recovery of possession of plaint schedule property. Said petition was opposed by the defendants. They also objected to the claim of source of title. Said application of the plaintiff/petitioner was rejected by the trial Court, against which this revision is filed.

3. The facts which are not in dispute are, plaintiff claimed possession of suit schedule property; in the written statement filed on behalf of the defendants, it was categorical assertion of the defendants that the property belongs to them and they have been in possession of the said property for more than 60 years and such possession is admitted by the legal heirs of Baba Singh. The issues in the suit were settled and trial commenced and it appears, both parties have let in substantial evidence in support of their respective contentions and by the time I.A. was filed, suit was

coming up for further evidence of defendants. Trial Court observed that it was not the case of plaintiff that he was dispossessed from the suit schedule property during the pendency of the suit. Taking note of the statements of the defendants in the written statement that they are in possession from a long time and plaintiff is not in possession, the trial Court observed that even by the time trial commenced, petitioner had the knowledge with regard to the contentions raised by the defendants in the suit, but did not take immediate steps for amendment of plaint as is now sought. Trial Court observed that having regard to the delay in filing such application asking alternative relief of possession, sufficient explanation is required by the plaintiff to come up with such belated application. Taking note of the proviso appended to Order VI Rule 17 of CPC and on analysis of the facts on record, trial Court found that no sufficient cause was shown for filing such application at belated stage and held that there was no due diligence by the party in taking steps for amendment of the plaint.

4. As per Order VI Rule 17 of CPC, once trial commences, ordinarily it is not permissible to seek amendment of pleadings by parties to the litigation. After the commencement of trial, if the trial Court is convinced that though party exercised due diligence, for *bona fide* reasons, he could not take steps to seek amendment, it can grant permission to amend the pleadings. Thus, if no application was filed for amendment of pleadings before commencement of trial, after the trial commenced, such application can be entertained only if the trial Court is satisfied about the *bona fides* of party in exercising due diligence.

5. In the case on hand, as noted above, in the written statement filed by the defendants, they have categorically asserted that they

were in possession for quiet long time and at any rate even before the suit was instituted. Thus, according to the defendants, by the time the suit was instituted, petitioner was not in possession of the subject property. Even assuming that such statement was not correct, having regard to the specific assertion of the defendants in their written statement, the petitioner/ plaintiff ought to have taken immediate steps for amendment of plaint. No valid explanation is forthcoming as to why plaintiff kept quiet after having noticed the stand of the defendants in their written statement and allowed the trial to commence and waited till recording of evidence is completed to a considerable extent.

6. As noted by the trial Court, on a reading of the affidavit filed in support of the I.A., it is clear that there is no explanation as to why he kept quiet for such long time.

7. The decision of Himachal Pradesh High Court in the case of **SMT. BATNI AND OTHERS v. SHRI TEJ SINGH**¹ was prior to the amendment to Order VI Rule 17 of CPC and, therefore, has of no avail. So also the decision of this Court in **MAREDDY SEETHARATHNAM V. SIRUVURI VENKATARAMA RAJU AND ANOTHER**², relied by the learned counsel for petitioner do not come to his aid.

8. The facts in the decision of **RAJKUMAR GURAWARA (DIED) THROUGH LRS. V. S.K.SARWAGI AND COMPANY PRIVATE LIMITED AND ANOTHER**³, relied by the learned counsel for respondents are somewhat similar to the case on hand. Supreme Court delineated the scope of discretion vested in the trial Court

¹ AIR 1966 Himachal Pradesh 1 (Vol.53, C.1)

² 2016 LawSuit(Hyd) 486

³ (2008) 14 scc 364

under Order VI Rule 17 of CPC after its amendment. Supreme Court held as under:

“13. To put it clear, Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the court to satisfy the conditions prescribed in the proviso.”

9. Having regard to the facts of this case, I am of the considered opinion that trial Court has come to correct conclusion by assigning cogent reasons in support of its decision in rejecting the application filed by the petitioner. The decision arrived at by the trial Court is in accordance with principle laid down by the Supreme Court in **RAJKUMAR GURAWARA** (supra).

10. Accordingly, the civil revision petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 07.09.2017
kkm

HON'BLE SRI JUSTICE P.NAVEEN RAO



CIVIL REVISION PETITION No.1526 OF 2011

Date: 07.09.2017

kkm