

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.4195 of 2015 & 771 of 2015

COMMON ORDER:

The genesis of these two revisions filed under Article 227 of the Constitution of India is the order dated 04.02.2015 of the learned Special Officer under the Andhra Pradesh (Andhra Area) Tenancy Act-cum-Principal Junior Civil Judge, Kakinada, passed in I.A.No.1829 of 2014 in A.T.C.No.1 of 2013 filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, ('the Code') seeking amendment of the main petition filed by the petitioner/ landlord.

2. I have heard the submissions of *Sri G. Vasantha Rayudu*, learned counsel for the revision petitioners/ tenants in both the revisions and *Sri M. Rammohan*, learned counsel for the landlord/ 1st respondent in both the revisions. The 2nd respondent in both the revisions is stated to be not a necessary party. I have perused the material record.

2.1 The parties shall hereinafter be referred to as 'respondents 1 and 2/ tenants' and 'petitioner/ landlord' as arrayed in the original tenancy case for convenience and clarity.

3. The landlord filed the original Tenancy case under Section 16 of the Andhra Pradesh (Andhra Area) Tenancy Act (hereinafter, 'the Act') for eviction of the tenants from the petition schedule properties and for recovery of vacant possession of the same. The tenants filed a counter resisting the said tenancy case. During the pendency of the said original petition, the landlord filed the subject interlocutory application for amendment of his main petition for eviction. The tenants filed a counter and resisted that interlocutory application. The Special Officer, Tenancy Tribunal, allowed the application in part and dismissed it insofar as certain portions of the amendment sought for

by the landlord. The tenants who are aggrieved of that portion of the order allowing the application filed C.R.P.No.771 of 2015; whereas the landlord who is aggrieved of the dismissal of the application in part filed A.T.A.No.7 of 2015. The said ATA was allowed by the learned appellate authority-cum-District Judge, Rajahmundry. Eventually, the application seeking amendment of the main petition filed by the landlord stood allowed in its entirety. Aggrieved of the orders of the learned District Judge passed in A.T.A.No.7 of 2015, the tenants preferred the other revision in C.R.P.No.4195 of 2015. Thus, the genesis for these two revisions is an order passed by the Tenancy Tribunal in the application filed by the landlord for amendment of the main petition.

4. The case of the landlord in support of the request for amendment of the main petition, in brief, is this: “He filed the tenancy case/main petition against the tenants for eviction and other reliefs. One Nakka Satyanarayana Murthy executed a Codicil dated 21.05.1998. A copy of the same was filed into Court along with the tenancy case. However, while verifying the chief examination affidavit of the petitioner filed in Court, it is noticed that the date of the Codicil was mentioned in the main petition as ‘23.05.1998’ instead of as ‘21.05.1998’. Further, it was also noticed that the name of the village ‘Vemulavada’ was not mentioned in paragraph 3(a) of the main petition. Further, in paragraph 6 of the main petition, it was mentioned as follows: ‘The respondents 1 and 2 used to pay maktha to Nakka Satyanarayana Murthy till the year 2003-04 and thereafter they used to pay the same to the 3rd respondent who assumed management of the petition schedule properties till the death of petitioner’s grandfather, i.e., 1998 and thereafter until year 2003-04.’ The said mistakes are typographical mistakes and are purely *bona fide* in nature. Hence, the petitioner is advised to seek the amendment of the main petition as stated in the affidavit and petition list.”

4.1 Per contra, the case of the tenants, in brief, is this: “The allegations in the affidavit of the landlord are all false. The landlord is none other than the cousin of these respondents/tenants; and he is the 2nd son of the third respondent in the main petition. He never attended to the welfare of late Nakka Satyanarayana Murthy, the grandfather of these respondents/tenants. The petitioner/landlord completed his degree course at Kakinada. During the period of his stay at Kakinada, he used to visit Karapa village, where these respondents 1 and 2/tenants and their grandfather used to reside under one roof. After completing his studies, he shifted to Visakhapatnam; and, after shifting to Visakhapatnam, he never visited Karapa. After obtaining degree in law, he started practice at Kakinada having opened his office near Balaji Tank, Kakinada. He never visited Karapa village at any time. Therefore, the question of Nakka Satyanarayana Murthy showing love and affection towards him and executing a Will and alleged Codicil does not arise. The said documents are rank forgeries. These respondents 1 and 2/tenants looked after their grandfather. These respondents/tenants are looking after the properties of late Nakka Satyanarayana Murthy during his life time and paid amounts to him towards maktha without fail. After his demise, the respondents 1 and 2/tenants and the third respondent separated the properties of late Nakka Satyanarayana Murthy and the respondents 1 and 2/tenants are in possession and enjoyment of their properties without any interruption and are cultivating the landed properties of the third respondent by paying amount to him and there are no amounts due to him. If the proposed amendment is allowed, it would amount to permitting the petitioner/landlord to deviate from the original pleading in his main petition. The proposed amendment cannot be permitted under facts and in law as it changes the nature of the case pleaded by the petitioner in the main petition. There are no grounds to allow the application for amendment filed by the landlord/ petitioner.”

5. At the hearing, learned counsel for both the parties advanced arguments in line with the respective pleaded cases.

6. Now, the short question is:

Whether the amendment sought for by the landlord/ petitioner in the tenancy case which was eventually allowed by the orders impugned in these two revisions is sustainable or not under facts and in law?

7. The facts and the contentions of both parties are already stated supra, in detail, and hence, there is no need to restate the same. The amendment sought for by the petitioner/ landlord can be dealt with in three parts.

7.1 The first part of the amendment is with regard to the mistake in the date of the Codicil. In this regard, the landlord/ petitioner in the tenancy case submits as follows: 'Late Nakka Satyanarayana Murthy executed a Codicil dated 21.05.1998. But, in the pleadings, by mistake, the date was mentioned as '23.05.1998' and therefore, the said typographic mistake is to be corrected.' The tenants/ respondents 1 and 2 oppose for granting the said amendment. Insofar as this part of the amendment sought, it is to be noted that along with the original tenancy petition, the copy of the Codicil was filed. The copy of the Codicil bears the date 21.05.1998. Therefore, the respondents 1 and 2 cannot be heard to say that the mistake in the date cannot be amended, as it is obvious and it appears *prima facie* that the date of the Codicil is wrongly mentioned as '23.05.1998' instead of as '21.05.1998'. Therefore, the petitioner in the tenancy case can be permitted to seek the amendment of the date of the Codicil, in the facts and circumstances of the case.

7.2 The next part of the amendment sought is with regard to non-mentioning of the name of the village 'Vemulavada' in paragraph 3(a) of the main Tenancy Petition. In the schedule of the petition, the lands were shown in various items mentioning the names of the villages in which the lands are situated. The

names of both the villages 'Vemulavada' and 'Karapa' are mentioned in the respective items mentioned in the schedule annexed to the main petition. However, in the body of the petition i.e. paragraph 3 (a) of the main petition, the petitioner while mentioning the location of the lands had mentioned the name of the village 'Karapa' only and did not mention the name of the other village 'Vemulavada'. Therefore, when the name of the village 'Vemulavada' was already mentioned in the schedule, in respect of the items of the land situated in the said village 'Vemulavada', it is obvious that the non-mention of the name of the said village in the body of the petition is a *bona fide* mistake. Since the schedule annexed to the original petition is correctly stated in all respects, it is just and fair to permit to amend the body of the petition by permitting to include the name of the village 'Vemulavada' also in paragraph 3(a) of the petition dealing with the location of the properties as such a course not only does not cause prejudice to the respondents 1 and 3/ tenants but also sub serves the ends of justice.

7.3 The last part of the amendment sought for is in regard to the mode of payment of makthas during a particular period prior to the institution of the main petition. In the original petition, as already noted, the petitioner/ landlord averred as follows:

'The respondents 1 and 2 used to pay maktha to Nakka Satyanarayana Murthy till the year 2003-04 and thereafter they used to pay the same to the 3rd respondent who assumed management of the petition schedule properties till the death of petitioner's grandfather, i.e., 1998 and thereafter until the year 2003-04'.

In the place of the said pleading, the petitioner/ landlord now intends to substitute the following pleading.

'The respondents 1 and 2 used to pay maktha to Nakka Satyanarayana Murthy till the year 1993-94 and thereafter they used to pay the same to the 3rd respondent who assumed management of the petition

schedule properties till the death of petitioner's grandfather i.e., 1998 and thereafter until the year 2003-04.'

A careful examination of the above said pleadings in juxtaposition would reflect that in the original pleading in the main petition, it is stated that the respondents 1 and 2 used to pay makthas to Nakka Satyanarayana Murthy till the year 2003-2004 and that thereafter, they used to pay makthas to the 3rd respondent in the main petition; and, that by way of the proposed amendment the petitioner now intends to plead that the respondents 1 and 2 used to pay makthas to Nakka Satyanarayana Murthy till the year 1993-94 and that thereafter, they used to pay the same to the 3rd respondent. Coming to the question as to whether or not such an amendment can be permitted, be it noted that it is an undisputed fact that late Nakka Satyanarayana Murthy died on 24.09.1998. Therefore, the question of payment of makthas by the respondents 1 and 2 to Nakka Satyanarayana Murthy after his death and during the years 2003-04 does not arise for consideration. Therefore, the amendment being sought for of the main petition to the effect that the respondents 1 and 2 paid makthas to Nakka Satyanarayana Murthy till 1993-1994 and that thereafter to the third respondent, as rightly held by the learned District Judge in the tenancy appeal, can be permitted, as it is also obvious that it is a *bona fide* mistake, in the facts and circumstances of the case.

8. Viewed thus, this Court finds that the order of the trial Court allowing the amendment application in part and the order of the District Court in the tenancy appeal allowing the remaining part of the amendment as sought for in the application of the petitioner/landlord are both justified and that the revision petitions filed by the respondents 1 and 2/tenants are devoid of merit and are liable to be dismissed.

9. In the result, both the revision petitions are dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions in these revisions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

02.01.2017
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