

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.116 of 2017

ORDER:

The unsuccessful respondent-defendant filed this civil revision petition, under Article 227 of the Constitution of India, assailing the order, dated 08.11.2016, of the learned IV Additional District Judge, Kadapa, passed in IA.No.1405 of 2016 in OS.No.42 of 2011 filed by the plaintiff under Section 22 of the Specific Relief Act, 1963 ['The Act', for short], read with Order VI Rule 17 of the Code of Civil Procedure, 1908, and Rule 28 of the Civil Rules of Practice and Circular Orders, 1980, requesting for permission to amend the plaint as stated in the petition list.

2. I have heard the submissions of Sri V. R. Reddy Kovvuri, learned counsel for the revision petitioner-defendant, and of Sri K. Murali Krishna, learned counsel for the respondent-plaintiff. I have perused the material record.

3. At the outset, it is to be noted that in a suit for specific performance filed on the suit contract of sale, dated 23.08.2010, which is being resisted by the defendant, the plaintiff filed the afore-stated IA for permission to amend the plaint to enable the plaintiff to seek the alternative relief of refund of the earnest money and penal amount in an equal sum along with interest at 18% per annum. The said application was resisted by the defendant by filing a counter. On merits and by the orders impugned in this revision, the trial Court allowed the petition of the plaintiff. Hence, the defendant is before this Court.

4. The case of plaintiff as stated in the affidavit filed in support of the petition, in brief, is as follows: 'The suit is filed for specific performance on the basis of suit contract of sale. The relief of specific performance was sought in the suit as per the terms and conditions of the suit contract of sale. Since

the property was not localised and the balance of sale consideration payable on the basis of the fixed extent of the property was not ascertained, the plaintiff could not pay the remaining balance of sale consideration and obtain a regular sale deed from the defendant though the plaintiff is always ready and willing from the inception to perform their part of the contract. To the notice issued prior to the filing of the suit, the defendant has not issued any reply. Having no other option the plaintiff filed the suit for specific performance. The defendant filed a written statement attributing laches to the plaintiff. 1/4th of the sale consideration in a sum of Rs.3,87,500/- was received by the defendant when he agreed to sell the property to the plaintiff. The defendant is also aware that no survey was conducted before the time fixed for payment of balance sale consideration and registration of the sale deed. The defendant is from the beginning trying to search loopholes on the side of the plaintiff so as to avoid his obligation under the suit contract of sale. Therefore, no survey was conducted and the property was not localised on ground. When the matter is coming for adduction of evidence on the side of the defendant, the plaintiff approached a senior advocate and he was were advised to seek amendment of plaint to enable him to claim the alternative relief of refund of the amount which was paid as advance. As per the terms and conditions of the agreement, in the event of failure of the defendant to perform his part of the contract, the plaintiff is entitled for refund of the amount paid by him as advance with penal amount as stipulated in the agreement itself. The plaintiff is also entitled to interest on the said amount which was retained by the defendant knowing fully well that there is no required extent available on ground for executing the sale deed. Under the provision of Section 22 of the Act, the plaintiff is entitled to seek amendment of the plaint and seek the alternative relief of refund of the amount paid under the suit contract of sale. If the amendment is permitted no prejudice would be caused to the defendant as the agreement also discloses the lawful entitlement of the plaintiff for refund of the advance amount as

well as penal amount in a like sum. The proposed amendment for seeking alternative relief will not change the cause of action and the nature and character of the suit. At any stage of the proceedings such an amendment can be permitted. Hence, it has become essential for the plaintiff to seek amendment of the plaint to enable him to seek the aforesaid alternative relief and other consequential amendments as stated in the petition list.'

5. The case of the defendant, in brief, is this: 'The plaintiff is seeking amendment of the plaint to include the alternative relief of refund of advance amount of Rs.3,87,500/- together with penalty in an equal sum with interest at 18%per annum. The proposed amendment is barred by time as the agreement of sale is dated 23.08.2010 and the date fixed for performance is 08.03.2011. Either the relief of specific performance or the refund of the advance amount can be claimed within three years from the date fixed for the performance as per Article 54 of the Limitation Act. Thus, the proposed relief viz., alternative relief of refund of advance amount etcetera is now barred by law of limitation. The trial has commenced in the suit long time back, that is, in the year 2012. After PW1 filed his affidavit in *lieu* of examination in chief, he was cross examined on 02.04.2013. The present application for amendment of the plaint which was filed after commencement of the trial is not maintainable. The suit was coming for arguments even by 24.03.2015. The suit was reopened at the instance of the plaintiff and plaintiff adduced further oral and documentary evidence. Hence, amendment being sought at such a belated stage cannot be permitted. The matters which happened prior to the institution of the suit are not relevant at the present stage. The plaintiff is prolonging the matter. The plaintiff has not given any reasons as to why he could not seek the present amendment before the commencement of the trial. In the absence of any explanation that despite due diligence the amendment could not be sought prior to the commencement of the trial, the amendment cannot be permitted.

No explanation in that regard is offered. Hence, the petition is liable to be dismissed.'

6. Learned counsel for both the parties advanced arguments in line with the contentions of the parties which are stated supra.

7. I have given earnest consideration to the facts and submissions.

8. In a suit for specific performance filed by the plaintiff, the plaintiff is now requesting the Court to permit him to amend the plaint to enable him to claim the relief of recovery of advance amount and penalty in equal sum with interest at 18%per annum simple.

9. The two fold contentions of the defendant are that the amendment which is sought after the commencement of trial is impermissible and that the relief being sought by way of the proposed amendment is barred by law of limitation and hence, the amendment of the plaint as being sought for by the plaintiff cannot be permitted.

9.1 Dealing with the contention that the plaintiff cannot seek amendment after commencement of the trial, it is profitable to refer to Section 22 of the Specific Relief Act, which reads as under:

22. Power to grant relief for possession, partition, refund of earnest money, etc.—

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 1[made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.

The said provision postulates that notwithstanding anything contained in the Code, in a suit for specific performance, the plaintiff is entitled to claim, in an appropriate case, any other relief to which the plaintiff may be entitled including the refund of earnest money or deposit paid or made by him, in case his claim for specific performance is refused and that if such relief was not claimed in the plaint, the Court shall at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including a claim for such relief. The above said special provision of law makes it manifest that the *proviso* to Order VI Rule 17 of the Code is no bar for permitting the proposed amendment of the plaint as sought for by the plaintiff in the instant suit. In *Babulal v. M/s.Hazari Lal Kishori Lal*¹ it was held as follows:

11. Section 22 enacts a rule of pleading. The Legislature thought it will be, useful to introduce a rule that in order to avoid multiplicity of proceedings the Plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking, the right to possession accrues only when suit for specific performance is decreed. The Legislature has now made a statutory provision enabling the Plaintiff to ask for possession in the suit for specific performance and empowering the Court to provide in the decree itself that upon payment by the Plaintiff of the consideration money within the given time, the Defendant should execute the deed and put the Plaintiff in possession.

12. The section enacts that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, namely, he may ask for possession, or for partition or for separate possession including the relief for specific performance. These reliefs he can claim, notwithstanding anything contained in the Code of Civil Procedure, 1908, to the contrary. Sub-section (2) of this section, however, specifically provides that these reliefs cannot be granted by the Court, unless they have been expressly claimed by the Plaintiff in the suit. Sub-section (2) of the section recognized in clear terms the well-established rule of procedure that the Court should not entertain a claim of the Plaintiff unless it has been specifically pleaded by the Plaintiff and proved by him to be legally entitled to. The proviso to this Sub-section (2) however, says that where the Plaintiff has not specifically claimed these reliefs in his plaint, in the initial stages of the suit, the Court shall permit the Plaintiff at any stage of the proceedings, to include one or more of the reliefs, mentioned above by means of an amendment of the plaint on such terms as it may deem proper. The only purpose of this newly enacted provision is to avoid multiplicity of suits and that the Plaintiff may get appropriate relief without being hampered by procedural complications.

¹ AIR 1982 SC 818

In view of the settled legal position, the first contention of the defendant based on the *proviso* to Order VI Rule 17 of the Code is devoid of merit.

9.2 The next contention of the defendant is that the suit contract of sale is dated 23.08.2010 and that the date fixed for performance is 08.03.2011 and, therefore, the relief of specific performance or the refund of the advance amount can be claimed within three years from the date fixed for the performance as per Article 54 of the Limitation Act and, hence, the proposed relief viz., alternative relief of refund of advance amount etcetera is now barred by law of limitation. Per contra, learned counsel for the plaintiff contended that in view of the provision of law under Section 22 of the Act, which facilitates claiming of the reliefs now being sought for by the plaintiff at any stage of the matter, the reliefs can be claimed at any stage, that is, even during the pendency of the first appeal and the Court shall allow the plaintiff to claim such reliefs and hence, the bar of limitation is not attracted and that the bar of limitation being a mixed question of fact and law, this Court need not go into the said issues while considering an application filed for amendment of the plaint.

9.2.a Nonetheless, learned counsel for the defendant placed reliance on the decision in Sampath Kumar v. Ayyakkannu² in support of the following general proposition: 'As per general rule and doctrine of relation back, an amendment of a pleading after its incorporation in the pleading relates back to the date of the suit.' He contended that the valuable right that has accrued to the defendants by lapse of time would be defeated, if the amendment is permitted without clarifying that the amendment on its incorporation in the plaint shall not relate back to the date of the suit and that the plaintiff would be getting over the bar of limitation insofar as the proposed relief being claimed by way

² (2202)7 SCC 559

of proposed amendment and such a course would cause prejudice to the defendants. He next submitted that in cases of this nature, the Court has wide discretionary power to direct that the amendment permitted shall not relate back to the date of the filing of the suit and, therefore, in the case on hand, in the event this Court comes to the conclusion that the amendment can be permitted, an observation may be made that the amendment incorporated in the plaint shall not relate back to the date of the suit and it may be clarified that to the extent the amendment is permitted it shall be deemed to have been brought before the Court on the date on which the application seeking amendment was filed.

9.2.b Learned counsel for the plaintiff contended as follows: In view of the special provision in Section 22 of the Act, which empowers the Court to allow the plaintiff to amend the plaint for including a claim with regard to any relief including the refund of earnest money and as the relief with regard to claims of refund of advance amount and penalty is an alternative relief and not in addition of the relief of specific performance, the doctrine of relation back would automatically apply to the facts of the present case and it shall be treated that the amendment incorporated in the plaint relates back to the date of the suit. He would further submit that if the amendment is not permitted as prayed for, the defendant would be retaining the property as well as the advance amount to the disadvantage of the plaintiff.

9.3.c Now the short question is whether an observation as being sought for by the defendant can be made in this instant matter to the effect that the proposed amendment which the Court may allow shall not relate back to the date of the suit and it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment of the plaint was filed.

9.2.d I have given earnest consideration to the facts and submissions. In view of the provision of Section 22 of the Act and the further fact that the relief is being claimed as an alternative relief and as the suit was originally instituted in the year 2011 within the period of one year from the date of the suit contract of sale, this Court is of the considered view that this is a case where the amendment on incorporation in the plaint should be allowed to relate back to the date of the suit without any observations/ directions as now being sought for by the defendant. As rightly pointed out in Sampath Kumar's case [4 supra], which was relied upon by the defendant, the suit is for issuance of a permanent prohibitory injunction and in such suit, an amendment of the plaint was sought to incorporate the relief of declaration of title and consequential relief of delivery of possession of the suit property. Hence, the said cited decision is distinguishable on facts. The instant suit is a suit for specific performance to which the provision of Section 22 of the Act has direct application.

9.2.e Dealing further with the same contention of the defendant that since the amendment of the plaint to incorporate the proposed reliefs was not sought within three years from the date fixed for performance under the suit contract of sale, the proposed amendment is barred by law of limitation in view of Article 54 of the Limitation Act, it is to be noted that the said article postulates that the period of limitation for specific performance of contract is three years from the date fixed for performance. However, the said article cannot be applied in isolation and keeping Section 22 of the Act out of the purview of consideration. Since the suit was brought within one year from the time fixed for performance and well within three years from the date of the suit contract of sale and as Section 22 of the Act empowers the Court to permit amendment of the plaint at any stage of the proceedings, the contention of the defendant that in this case, the general principle of relation back shall not be applied to the amendment that may be permitted to be incorporated in the

plaint is devoid of merit and needs no countenance. Further, if any such rider that the amendment shall not relate back to the date of the suit and that the amendment to the extent permitted shall be deemed to have been brought before the Court on which the application for amendment was filed is to be added in the order allowing the amendment, the said course would be contrary to the provision of Section 22 of the Act and also the legislative intent and object namely preventing unjust enrichment of the defendants at the cost of the plaintiff in the event the relief of specific performance is not granted to the plaintiff. Since this Court exercises equity jurisdiction in suits for specific performance, it is equitable to allow the doctrine of relation back to operate in the matter without making any observations as being sought for by the defendant.

10. On the above analysis, and for the reasons aforesated, this Court finds that the revision is devoid of merit and the same is liable to be dismissed.

11. Accordingly, the Civil Revision petition is dismissed. There shall be no order as to costs.

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

06.11.2017
Vjl

M. Seetharama Murthi, J