

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4984 of 2017

ORDER:

The revision petitioner is the unsuccessful petitioner in E.A.No.401/2016, which is an application seeking for amendment of the claim petition filed in E.A.No.245 of 2014 in the execution proceedings covered by E.P.72 of 2014 in O.S.No.2409 of 2010 for recovery of money pursuant to the decree dated 30.09.2013, between the respondents to the revision i.e., the decree holder and the J.Dr. in relation to recovery of money decreed by sale of the property of the J.Dr. sought for.

The claim petition is maintained under Order XXI Rule 58 CPC saying the petitioner is the agreement holder and the attachment cannot be affected as there is an agreement in favour of the claimant and thereby the attachment has to be raised. From the very prayer in the claim petition in E.A.No.245 of 2014 it reads as follows: "in the circumstances stated supra, the claim petitioners pray the Hon'ble Court may be pleased to dismiss the EP while raising the attachment order dated 29.04.2014 by adjudicating the right of the claim petitioner in respect of the EP schedule property in the interest of justice and to pass such other orders".

The claim petition averments in nutshell show that there was a development agreement for construction dated 25.06.2007 of the property belongs to the wife of the decree holder and the J.Dr. developed the property along with adjacent property with the name of Sri Sai Residency with changed name of Sai Sarover Residency and the EP schedule property is a flat therein that fell

to the share of J.Dr. and as per the agreement between the developer and landlady dated 04.02.2010 and the claim petitioner purchased the property from the J.Dr. under unregistered sale agreement dated 11.09.2008 and memorandum of undertaking dated 28.04.2011 having paid full consideration of Rs.21,50,000/- and made improvements by spending excess amount and the decree holder very well knew about the fact and the attachment will not survive and hence to be raised. In the claim petition filed in 2014 in E.P. supra, the amendment petition filed in August 2016 in E.A.No.401 of 2016 to incorporate in the prayer portion a direction to the 2nd respondent/J.Dr. to register the schedule property i.e., flat No.303 along with parking lot in favour of the claim petitioner and in the alternative to register the same as per the agreement of sale consequently by putting the claim petitioner in possession in the interest of justice and to pass such other just orders.

The lower Court no doubt dismissed the amendment petition by impugned order dated 30.03.2017 in mainly considered lack of due diligence pursuant to the amended provision of Order VI Rule 17 CPC.

The contentions in the grounds of revision impugning the order is that the lower Court did not properly consider the scope of law and the dismissal of the application is unsustainable, the object behind amendment is to avoid the multiplicity of proceedings and should have been considered that all claims should be adjudicated in the same proceedings including from the wording of Order XXI Rule 58 and not by separate suit for the Court to pass appellable order and where the relief which could

not be sought without need of filing suit, then filed under Order XXI Rule 58 which no way cause prejudice to the rights of the decree holder by the amendment sought, the lower Court should have been allowed and the dismissal order is liable to be set aside and for that the learned counsel for the revision petitioner placed reliance on **J.Yadagiri Reddy and others vs. J.Hemalatha and others**¹, which is a judgment of single Judge of this Court referred expressions of Division Bench of the Apex Court in **Vidyabai & Others Vs. Padmalatha**², and three Judge Bench of the Apex court in **Sajjan Kumar Vs. Ram Kishan**³ of purpose of amendment is to bring the real questions in controversy between the parties inter se and also in **M/s. Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & others**⁴ and the other judgment placed reliance is **Mohd. Mehmood Vs. Syed Anwar Mustafa and Others**⁵ and the other judgment placed reliance is **Vantipalli Suryavenkata Satya Prasad Vs. Gangumalla Suryakantam**⁶ and also in **P.Durga Reddy and another Vs. B.Yadi Reddy**⁷, **Sampath Kumar Vs. Ayyakannu**⁸ and the full bench judgment of this Court in **Pallam Reddy Mastan Vs. Nellore Finance Corporation and Others**⁹ in a claim petition and the objections and the scope of law in adjudication of claims dealt with in **Baldev Singh & Others Vs.**

¹ 2016 (3) ALT 211

² AIR 2009 SC 1433

³ 2005 (13) SCC 89

⁴ 2009 (10) SCC 84=AIR 2009 SC (Supp) 2897

⁵ 2016 (2) ALT 262

⁶ 2016 (4) ALT 581

⁷ 2016 (2) ALT 63 = 2015(1) LS 201.

⁸ AIR 2002 SC 3369

⁹ AIR 1993 AP 297

Manohar Singh¹⁰ and M.Kamallamma Vs. B.Doraswami Reddy and Others¹¹.

There is no dispute on the proposition of law laid down in the expressions that to avoid multiplicity of proceedings and if no injustice or prejudice to be caused to the other side, the amendment can be allowed to sub serve the ends of justice. However it is not water down the concept of due diligence contemplated by Order VI Rule 17 CPC, but for at best stated the right of party to ask by satisfying the due diligence is different from the power of the Court if necessary to permit amendment to sub serve the ends of justice. The fact remains even from the 3 Judge Bench of the Supreme Court in 2015 supra the amendment cannot be to the prejudice of the other side. A party under the guise of amendment cannot even deny any admission, but for to explain if any. By taking into consideration of the scope of law, coming to the facts the purpose of the claim for adjudication including from the Full Bench expression of this Court in 1993 supra the right of a person who objects to the attachment affected under Order XXI Rule 54 by raising a claim under Order XXI Rule 58 CPC as on the date of attachment and raising of the claim. The claim in seeking to raise the attachment of the claimant is as third party to the decree and the claim is as the sale agreement holder. The claim petition can be decided only with reference to the facts of the claimant's right as on the date of the raising claim in seeking to raise the attachment; beyond that the claimant cannot be permitted to seek a relief against the J.Dr. which is outside the purview of the attachment sought by the

¹⁰ AIR 2006 SC 2832

¹¹ 2017 (5) ALT 136

decree holder of the property of the J.Dr. Amendment cannot be permitted to create a new cause of action much less the travel beyond the scope of the area of lis covered by the claim petition. None of the judgments referred supra to the above said claim or contentions are in support of it.

Having regard to the above, but for remedy of suit for specific performance, if at all to enforce that sale agreement, against J.Dr., the only thing to decide the claim petition under the sale agreement is can the claimant oppose attachment sought by the decree holder for recovery of money decree against the property of the J.Dr. in which the claimant claims he is the agreement holder. Thus nothing herein to consider to grant any decree for specific performance of the said contract for sale in the claim or not.

Accordingly and in the result, the Civil Revision Petitions is dismissed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 27.12.2017
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