

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.3833 & 3906 of 2016

COMMON ORDER:

C.R.P.No.3833 of 2016 is filed aggrieved by the order dated 21.07.2016 in I.A.No.1465 of 2016 in O.S.No.143 of 2015 on the file of the Principal District Judge, Rajahmundry, whereas C.R.P.No.3903 of 2016 is filed aggrieved by the order dated 21.07.2016 in I.A.No.1343 of 2016 in L.G.C.No.1 of 2014 on the file of the Principal District Judge, Rajahmundry.

2. The respondents 1 & 2 in C.R.P.No.3833 of 2016 filed I.A.No.1465 of 2016 in O.S.No.143 of 2015 before the Court of Principal District Judge, Rajahmundry, to permit them to amend the written statement by adding the following at the end of paragraph No.15:

“Indeed in September, 1994 Smt. Nanduri Suryakantham who said to be predecessor of petitioner got issued notice to respondents 1 and 2 and Sri Devarapalli Parthasaradhi claiming title to entire 681 sq. yards in plot No.14, obviously including petition schedule property. To such notice from Sri Chintapenta Venkateswarlu and Sri Chintapenta Prabhakar Rao, Advocates, Rajahmundry on her behalf, the respondents 1 and 2 arranged reply through their advocate Sri K.Adinarayana Murthy, advocate, Rajahmundry wherein the respondents 1 and 2 asserted their title to the petition schedule property and denied title of predecessor of petitioner. As such, at least from September, 1994 respondents claimed title to the petition schedule property openly to the knowledge of predecessor of petitioner and hostile to the claim of petitioner or his predecessor.”

The said interlocutory application was allowed vide order dated 21.07.2016. Aggrieved of the said order, respondent No.1 in I.A.No.1465 of 2016 filed C.R.P.No.3833 of 2016.

3. The respondents in C.R.P.No.3906 of 2016 filed I.A.No.1343 of 2016 in L.G.C.No.1 of 2014, before the Court of Principal District Judge, Rajahmundry, to permit them to amend the counter by adding the following at the end of paragraph No.15:

“Indeed in September, 1994 Smt. Nanduri Suryakantham who said to be predecessor of petitioner got issued notice to respondents 1 and 2 and Sri Devarapalli Parthasaradhi claiming title to entire 681 sq. yards in plot No.14, obviously including petition schedule property. To such notice from Sri Chintapenta Venkateswarlu and Sri Chintapenta Prabhakar Rao, Advocates, Rajahmundry on her behalf, the respondents 1 and 2 arranged reply through their advocate Sri K.Adinarayana Murthy, advocate, Rajahmundry wherein the respondents 1 and 2 asserted their title to the petition schedule property and denied title of predecessor of petitioner. As such, at least from September, 1994 respondents claimed title to the petition schedule property openly to the knowledge of predecessor of petitioner and hostile to the claim of petitioner or his predecessor.”

The said interlocutory application was allowed vide order dated 21.07.2016. Aggrieved of the said order, the respondent in I.A.No.1343 of 2016 filed C.R.P.No.3906 of 2016.

4. Learned counsel for the petitioners submits that the trial Court ought to have seen that the proposed amendment

is an after-thought and the interlocutory applications, for amendment of written statement and counter, were filed after the commencement of trial and also after the completion of cross-examination of PW.1 in part. Learned counsel further submits that the proposed amendment has nothing to do with the merits of the case and no documentary evidence was filed to support the contents of the proposed amendment. He further submits that the trial Court erred in holding that the respondents 1 and 2 did not show due diligence as contemplated under proviso to Order VI Rule 17 C.P.C. for filing the said applications. Whereas it is the submission of learned counsel for the revision respondents that the respective impugned orders of the lower Court should no way requires interference by this Court, while sitting in revision within its scope, and sought for dismissal.

5. Heard both sides and perused the material on record.

6. The lower Court in the respective orders, in considering the amendment filed after the commencement of trial, observed as if trial was not commenced, though trial was already commenced. The lower Court referred to the expression of the Apex Court in Chander Kanta Bansal v.

Rajinder Singh Anand¹ that, in that judgment, after closure of evidence and arguments with inordinate delay of 21 years to the date of suit, the proposed amendment sought for allowed that was find fault, whereas in this case trial is yet to commence and thereby the facts are different and that the proposition has no application to the facts of this case. It is further observed that the proposed amendment is only to strengthen the defence and no way changes the defence much less to the prejudice of plaintiff and petitioner respectively in the two Civil Revision Petitions.

7. From perusal of the proposed amendment sought for in the written statement to the suit vis-à-vis the counter to the land grabbing case to incorporate the self-same paragraph respectively at the end of paragraph No.15 is in setting up the independent right and title in their own by denial of title of the plaintiff and petitioner respectively in the two Civil Revision Petitions to the knowledge of them in setting up hostility. Undisputedly, there is no bar for the defendant-respondent to take inconsistent pleas, but for to say if at all there is any admission, that admission in the pleading cannot be allowed to be withdrawn by any amendment, but for to explain and clarify, if any, vide three Judge Bench expression

¹ AIR 2008 SC 2234

in Ram Niranjana Kajaria v. Sheo Prakash Kajaria² covering the earlier two Judge bench expression in Mount Mary Enterprises v. Jivratna Medi Treat Private Limited³; there it is observed that Order VI Rule 17 C.P.C. postulates the amendment at any stage of the proceedings as held by the Apex Court way back in Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil⁴ that an amendment can be allowed, provided of not working injustice to other side and of being necessary for purpose of determining the real questions in controversy between the parties and should be refused only where the other party cannot be placed in the same position, as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. Undisputedly, in the suit for declaration of title in relation to the plaint schedule Item-1 and that is not affected by the registered Sale Deeds dated 30.11.1988 and 27.08.1993 and to cancel the two Sale deeds and to grant consequential permanent prohibitory injunction against the defendants from interfering with the plaintiff's possession and enjoyment. Similarly, in L.G.C.No.1 of 2014, seeking delivery of possession from the respondents and to punish them under the Land Grabbing Act and also to award

² (2015) 10 SCC 203

³ (2015) 4 SCC 182

⁴ AIR 1957 SC 363

the damages by compensation for wrongful possession and such other relief saying the respondents 1 to 3 of the main petition are the land grabbers of the property of petitioner by mentioning the source of title as the legal heir of Nanduri Prakasamma for 671 square yards, of which the petition schedule claimed part. In both the matters, the plaintiff and petitioner respectively has to prove his right and title over the property and its entitlement. What the respondents-defendants' contest is denying the plaintiff's right and title. Apart from it, the other claim presently by seeking the amendments is in setting up title in their own and by denying the title of plaintiff and petitioner respectively and in claiming from giving of reply notice, the hostility made known to the plaintiff and petitioner respectively.

8. By this, no way changes the suit */is* and the land grabbing */is* nor prejudice the case of plaintiff and petitioner to the suit and land grabbing case respectively, but for to the extent to say at best the animus set up from the reply notice is an additional pleading. Once such is the case, though there is no due diligence explained in seeking amendment after the commencement of trial, from the law fairly settled irrespective of the due diligence concept, as per the amended

C.P.C. the Court also got the power to permit any amendment necessary, subject to imposing of costs. The learned counsel for the revision petitioners placed reliance on the expression of the Apex Court in *Usha Balashaheb Swami v. Kiran Appaso Swami*⁵. Even from this expression, the Apex Court observed that addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in written statement can be allowed as long as the amended pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely and it is also observed that where amendment of written statement permitted by trial Court in its discretion on consideration of principles of law and material on record, the revision Court is not justified readily to interfere. In *Rajkumar Gurawara (dead) through LRs v. S.K. Sarwagi & Co. Pvt. Ltd.*⁶ wherein it was held that once trial commenced the showing of due diligence is the prerequisite, though for the pre-trial amendment it can be allowed liberally. The term 'due diligence' determines the scope of a party's constructive knowledge, claim and is critical to the outcome of the suit. It is observed that there is jurisdiction on the Court to allow either party to alter or amend the pleadings at any stage of

⁵ (2007) 5 SCC 602

⁶ (2008) 14 SCC 364

pleadings and on such terms, it can be just provided such amendment seeks determination of the real question and controversy between the parties. In *Union of India v. Pramod Gupta*⁷ it is observed that delay and latches in seeking amendment is one of the relevant factors, though not the sole factor. In *Surender Kumar Sharma v. Makhan Singh*⁸, it was observed that merely because the amendment is sought belatedly by itself is not a ground to reject, where the Court feels allowing of the application resolves the real controversy between the parties. In *Sushil Kumar Jain v. Manoj Kumar*⁹ it is observed that the amendment of plaint and amendment of written statement are not necessarily governed by the same principle exactly. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. In *M/s. Revajeetu Builders & Developers v. Narayanaswamy & Sons*¹⁰ it was held at paragraph No.65 that for unnecessary delay and inconvenience, the opposite party must be compensated with costs within the judicial exercise, in considering the amendments, in giving guidelines as to the costs also and in saying the Court got the power to permit any

⁷ 2005 (12) SCC 1

⁸ 2009 (10) SCC 626

⁹ AIR 2009 SC 2544

¹⁰ 2009 (10) SCC 84

amendment in the interest of justice or to determine the real controversy in question, though party cannot claim as a matter of right, the Court should not adopt a hyper technical approach. From the above law, undisputedly the lower Court is wrong in saying the trial is not commenced even trial commenced and the yardstick for considering an amendment before commencement of trial is different to the yardstick for considering an amendment after commencement of trial; and likewise the yardstick for considering the amendment of plaint is somehow different to the yardstick for considering the amendment of written statement. Apart from in any of the pleading of either side, an admission cannot be allowed to be deleted, but for to explain, if any. Thereby, the impugned orders of the lower Court in both the Civil Revision Petitions are liable to be set aside for re-determination with reference to the above principles of law on own merits.

Accordingly, these two Civil Revisions Petitions are partly allowed by setting aside the impugned orders of the lower Court in I.A.No.1465 of 2016 in O.S.No.143 of 2015, dated 21.07.2016, and in I.A.No.1343 of 2016 in L.G.C.No.1 of 2014, dated 21.07.2016, and both the petitions are restored to the respective files with a direction to hear both sides

afresh and pass appropriate orders afresh on own merits.
Consequently, miscellaneous petitions pending, if any, shall
stand dismissed.

Dr. B. SIVA SANKARA RAO, J

22.12.2017
MVA

