

*** The Hon'ble Sri Justice Gudiseva Shyam Prasad**

+ Civil Revision Petition Nos.2234, 2351 & 2444 of 2017

% Dated 05.10.2017

Between:

M.RamuRandhi China Sanyasi Naidu (died) and others

... Petitioners

and

Randhi Sanni Babu (died) and others

...Respondents

! Counsel for the petitioners: Mr.Gorle Gopalakrishna

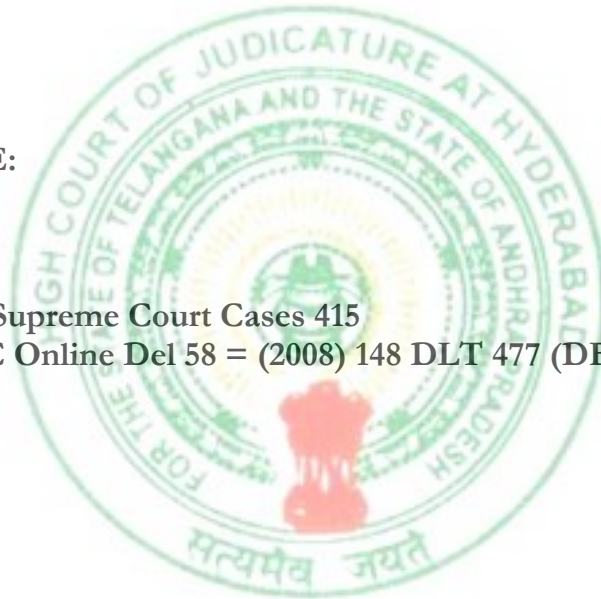
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? Cases cited:

(2004) 6 Supreme Court Cases 415

2008 SCC Online Del 58 = (2008) 148 DLT 477 (DB)



The Hon'ble Sri Justice Gudiseva Shyam Prasad
Civil Revision Petition Nos.2234, 2351 & 2444 of 2017

Date: 05.10.2017

Common Order:

These three Civil Revision Petitions arise out of separate but similar orders, dated 16-02-2017, in IA.Nos.158, 157 and 159 of 2016 in OS.Nos.330, 329 and 331 of 2017 respectively on the file of the Senior Civil Judge, Parvathipuram, Camp Court at Vizianagaram.

The brief facts of the case are that the petitioners are the plaintiffs and the respondents are the defendants in the aforesaid suits filed for declaration of title and perpetual injunction. Pending the suits, the aforesaid Applications were filed under Order VI Rule 17 CPC to amend Para VI part of the respective plaints as "Para (VI)(b) to declare the sale deed, dated 24-01-2007, executed by defendant Nos.1 to 10 in favour of defendant No.11 as null and void."

Since the parties are common and the issue raised in all the three Civil Revision Petitions is same, they are disposed of by a Common order with the consent of the learned Counsel for the petitioners.

Heard the arguments of the learned Counsel for the petitioners.

Notices have been served on all the respondents except respondent Nos.8, 9, 12 and 13. It is stated that they are related to respondent No.3 on whom notice has been served, but none appeared on behalf of the aforesaid respondents.

The learned Counsel for the petitioners submits that due to inadvertence, the petitioners did not seek the relief of cancellation of sale deeds as null and void. The learned Counsel referred to Para IIIC of the plaint in OS.No.330 of 2007, which reads as under:

“The plaintiff submits that the said orders of MRO, Gantyada issuing certificates have become final. The MRO has intimated to the Sub Registrar not to entertain any registration in respect of the said lands. The MRO before issuing the said certificates issued notice to all the concerned including the Defendants. The plaintiffs submit that the Defendants 1 to 13 suppressing the material facts and the sale in favour of Plaintiffs, executed the sale deed dt. 24.1.2007 in favour of Defendants 14 & 15 in respect of the land measuring Ac.14.96 cents in S.No.145 Old S.No.5/1, the same was provisionally registered as document No.P 6/2007 and it was later released as Document No.8071/2007 on 24.7.2007 in favour of Defendant 14 & 15. Registration extract of the said document is filed herewith. The said sale deed is void and unenforceable and does not confer any title on the defendants 14 and 15, since defendants 1 to 13

themselves have not title to convey. As the plaintiffs are not parties to the said sale deed, the Plaintiffs are ignoring the same which the plaintiffs are entitled to under Law. The schedule given in the said sale deed is not correct, as the same pertains to the land for which the pattadar passbooks and title deeds were issued in favour of the Plaintiffs.”

It is submitted that the plaintiffs have already taken a plea in Para IIIC of the plaint, but due to inadvertence, they did not seek the relief of cancellation of the sale deeds.

The trial Court, on consideration of the material on record, has dismissed the Petitions filed under Order VI Rule 17 CPC seeking amendment of the plaint on the ground that the period of limitation for seeking the relief of cancellation is three years from the date of knowledge about the document; that the said period was barred and that therefore, the petitioners cannot seek amendment of the plaints for incorporating the relief of cancellation of the sale deeds.

The learned Counsel for the petitioners placed reliance on **Pankaja and another vs. Yellappa (dead) by Lrs and others**¹ and **Chet Ram Gupta thru LRs vs. Motian Devi Lamba & others**² and submitted that if granting an amendment really subserves the ultimate cause of justice and avoids further

¹ (2004) 6 Supreme Court Cases 415

² 2008 SCC Online Del 58 = (2008) 148 DLT 477 (DB)

litigation, the same should be allowed and that it is the discretion of the Court depending upon the facts and circumstances of the case to allow or reject the amendment.

Perused the judgments of the Apex Court relied upon by the learned Counsel for the petitioners.

In **Pankaja** (1 supra), the Apex Court held as under:

“The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.”

In **Chet Ram Gupta** (2 supra), the Apex Court held as under:

“While deciding the amendment application, question of prejudice caused to the opposite side is also a relevant consideration. An amendment application may be dismissed if a relief sought by way of amendment is barred by limitation. While examining the question of amendment, Courts must examine the nature of amendment and a party should not be allowed and permitted to set up a new case or a new cause of action when

such new case or cause of action is otherwise barred by law of limitation. If a prayer for amendment is based on a new case or a new cause of action and is also barred by limitation, then prejudice is caused to the defendant and such prejudice cannot be compensated by payment of costs. However, when an amendment does not constitute a new cause of action or makes a different case but merely amounts to a different or additional approach to the pleaded facts, amendment can be allowed to a different or additional approach to the pleaded facts, amendment can be allowed even after the expiry of period of limitation.”

In the instant cases, the suits were filed in the year 2007 and although the plaintiffs had taken a plea with regard to the sale transactions in the plaint, due to inadvertence, they did not seek the relief of cancellation of the sale deeds, which were stated to have been executed in the year 2007 itself. The amendment sought for in the present cases does not constitute a new cause of action and it merely amounts to an ancillary relief sought basing on the pleaded facts. Therefore, the amendment sought for by the petitioners cannot be said to be barred by limitation.

In view of the law laid down by the Apex Court in the decisions cited supra and in view of the facts and circumstances of these cases, as the petitioners could not plead for the relief of cancellation of the sale deeds due to inadvertence, the amendment as sought for can be permitted.

Accordingly, Orders, dated 16-02-2017, in IA.Nos.158, 157 and 159 of 2016 in OS.Nos.330, 329 and 331 of 2017 respectively on the file of the Senior Civil Judge, Parvathipuram, Camp Court at Vizianagaram, are set aside and the Civil Revision Petitions are allowed permitting the petitioners/plaintiffs to amend the plaints as sought for. The trial Court is directed to dispose of the suits without getting influenced by any of the findings made by this Court in this order.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.


(Gudiseva Shyam Prasad, J)

Dt: 5th October, 2017

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