

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5519 of 2011

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioners/ appellants is directed against the orders, dated 21.11.2011, of the learned III Additional District Judge, Karimnagar, passed in I.A.No.165 of 2011 in A.S.No.27 of 1989 filed by the appellants under Order XLI Rule 2 of the Code of Civil Procedure, 1908, read with Rule 28 of the Civil Rules of Practice, 1980, requesting to permit the appellants to raise, in the aforementioned first appeal suit, additional grounds, which are stated in the petition list.

2. I have heard the submissions of *Sri P.V.Narayana Rao*, learned counsel for the petitioners/ appellants, ('appellants', hereinafter) and of *Sri C.Ramesh Sagar*, learned counsel for the respondents/ plaintiffs, ('respondents', hereinafter). I have perused the material record.

3. The case of the appellants as stated in the affidavit filed in support of the petition, in brief, is as follows:

The respondents filed the suit for declaration of title, recovery of possession and mandatory injunction in regard to Ac.0.14 guntas of land in Sy.No.22/ b pleading that the suit land is Khairati Inam land and that the land in Sy.No.22 along with other lands was also acquired by the Government for extension of Abadi of Choppadani village and that an award was passed and that the same was handed over to the Gram Panchayat. It is also alleged in the plaint that the R.D.O issued a letter to return the balance vacant land from the acquired land from Sy.No.22 to the erstwhile owner. On merits, the said suit of the respondent was decreed. Therefore, the petitioners/ appellants filed the aforesaid first appeal. The said appeal is pending on the file of the learned III Additional District Judge, Karimnagar. The appeal was once dismissed.

However, the second appeal was allowed and the first appeal was remitted to the 1st appellate Court.

4. The case of the appellants in support of their request to raise additional grounds in the first appeal suit, in brief, is as follows: "As per the plaint averments and the suit documents, exhibits A24 and A26, the suit land is an inam land and that the said land was acquired by the Government and that an award was passed after possession of the land was taken. In the plaint itself, a foundation was laid that the suit land is Khairati Inam land and that it was acquired by the Government. In that view of the matter, the suit is not maintainable in view of the provisions of the Inam Abolition Act, 1955, and the Land Acquisition Act, 1894. During the course of arguments of the appeal suit when the said and other grounds were urged on the said aspects, the respondents raised an objection that such grounds are not taken in the memorandum of appeal and therefore, the grounds cannot be permitted to be urged. Though such a contention raised in the first appeal on behalf of the plaintiff/respondent is untenable, to avoid legal complications, the appellants were advised to file the application to permit them to raise the following additional grounds in the first appeal suit:

"(A) Ground No.23:- The appellants submit that the land in Sy.No.22 is a Khairati Inam land specifically pleaded and admitted in Para 3 of the plaint to the effect the said suit land was kairati Inami land of matam Vaeramma and on her death Sy.No.22 was mutated in the name of the plaintiff and PW1 in cross examination admitted to the effect that "Originally the suit land was of "Inam" and Inams stood abolished U/ s 3 of AP (TA) Abolition of Inams Act 1955 in the year 1955 and vested in the Government of Andhra Pradesh and there is no plea or evidence on record produced by the plaintiff that the authority under A.P (T.A) Abolition of Inams Act issued occupancy certificate U/ s 4 of the said A.P (T.A) Abolition of Inams Act 1955 in S.No.22 to the plaintiff. Therefore the plaintiff has no title to the suit land in S.No.22 and not entitled to seek the relief of declaration of title and recovery of possession and mandatory injunction and the suit in O.S.No.43/ 82 is not maintainable and liable to be dismissed as the jurisdiction of civil court to entertain the suit is barred in respect of Inam lands.

(B) Ground No.24:- 'The appellants submits that the plaintiff alleged in para 6 of the plaint that an area of Ac.48.33 guntas in Sy.No.22, 23, 24, 28, 30, 33, 37, 1413, 1415, 1416, 1418, 1419, 1420 and 21 of Choppadandi (v) was acquired in 1349 F for the extension of Abadi (Ex. A 26) gazette published in then Hyderabad State Gazette Volume 71 dt.7th Kurdad 1349 F and the said Notification can be withdrawn only by means of another Notification of withdrawal by land acquisition U/s 48(1) of the Act published in the gazette and until such a notification is made and published, original notification continue and the possession of lands was taken by Government as per the said gazette notification dt.7th Kurdad 1349 F and title is vested in the Government and it cannot be divested in any manner nor given to any of the party from where it was acquired. Therefore no suit for declaration of tile and recovery of possession and mandatory injunction sought in O.S.No.43/ 89 is maintainable and civil court has no jurisdiction to entertain the suit. Further, there is no record showing re-conveyance of land in Sy.No.22 to the plaintiff under 90(32) No.3 and Ex.A5 is not a deed of re-conveyance nor even if it is taken into consideration for arguments the RDO & Collector are not competent to issue such letter PW1 admitted in his evidence to that effect that "No amount was recovered from me by the Government in lieu of returning the land of Ac.1-00. The Government has not obtained any receipt from me in token of delivery of Ac.1-00 to me nor any panchanama was conducted while returning the land to me. I have not handed over any document in favour of the Government showing that I have taken possession of the land. I have no document with me to show that the Government delivered possession of Ac.1-00 land to me."

(C) Ground No.25: The appellants submit that Ex.B24 would show that Veeramma and Achamma had no issue male or female. Therefore, Veeramma cannot be maternal grandmother of the plaintiff and failed to prove that he is the only nearest heir to Veeramma & Atchamma in A.S.No.43/ 82 is to be dismissed.

(D) Ground No.26: The appeal is not maintainable against individual officials without impleading the state of A.P as party and without compliance of U/ Sec.80 CPC."

In view of the plaint averments and the facts and circumstances of the case, the appellants are entitled to raise the said grounds and urge the legal position based on the pleadings in the plaint and the admitted nature of the suit land as Inam land and also its acquisition by the Government. Inspite of the said facts, the plaintiffs/respondents raised an objection that without taking any grounds in the memorandum of appeal and without laying any foundation in the grounds, the appellants cannot argue any grounds which cause surprise and prejudice to the plaintiffs/respondents. Though the said contention is not

tenable, for an abundant caution, the present petition is filed to permit the appellants to raise the above said additional grounds in the first appeal pending before the Court below.

5. Per contra, the case of the respondents/ plaintiffs is as under:

The application seeking to amend the grounds of appeal and permission to urge additional grounds stated in the petition list is not maintainable. The High Court in S.A.No.575 of 1995 remanded the first appeal to the trial Court to consider the additional documents produced by the appellant and dispose of the appeal. Therefore, the remand order passed by the High Court in the second appeal restricts the scope and ambit of the first appeal. Therefore, no pleas exceeding the scope of remand shall be allowed to be urged. In the written statement filed by the defendants 3 and 4 and also in the written statement filed by the 5th defendant, there is no pleadings in regard to the grounds, which are being sought to be raised by the appellants by way of amendment to the grounds of appeal. The grounds of appeal, if permitted to be urged would amount to allowing the appellants to raise new contentions and grounds and the said contentions alter the nature of the defence of the appellants which was set up at the initial stage. Such grounds, if permitted to be urged require recording of fresh evidence. The appellants cannot be permitted to fill up the lacunae in the evidence adduced by them before the trial Court. Merely because the plaintiff objected to the arguments advanced at the hearing of the appeal, without any basis in the original pleadings, the appellants cannot seek to urge additional grounds or amend the grounds originally urged in the first appeal. The appellants have not sought amendment of the written statement. The application seeking amendment of grounds of appeal is belated and is filed with an intention to drag on the litigation. There are no valid and sufficient reasons to grant the request of the appellants. Their request is devoid of merit and lacks *bona fides* and is hence, liable to be rejected.

6. The 1st appellate Court dismissed the application with a direction to the parties to proceed with the hearing of the appeal. Therefore, the aggrieved appellants are before this Court.

7. The learned counsel for the appellants while reiterating the pleaded case of the plaintiffs would submit as follows: “The order of the 1st appellate Court is unjust and contrary to law and that in view of the nature of the suit and the admitted pleadings in the plaint, the Court below ought to have permitted the appellants to urge additional grounds by amending the grounds of appeal as the necessary facts and evidence are borne out by record and the appellants are always entitled to urge the grounds based on law. There are clear averments in the plaint that the suit land is an inam land and that the inamdar of the land was Harmaiah, i.e., the grandfather of one of the appellants. There is also relevant evidence already on record. Since the land is an inam land, the additional grounds urged would go to the root of the matter on the bar of jurisdiction of the civil Court. Therefore, the first appellate Court, which is the last Court of fact, is not justified in not permitting the appellants to urge the additional grounds.” He, therefore, prayed for setting aside the order.

8. Per contra, the learned counsel for the respondents/plaintiffs while supporting the order of the Court below would contend as follows: “The 1st appeal was once decided on merits; however, this Court allowed the second appeal and remitted the first appeal to the Court below for fresh disposal after considering the additional evidence. Therefore, the said judgment in the second appeal remitting the matter to the 1st appellate Court for fresh disposal as directed in the judgment in the second appeal has become final. Allowing the appellants to now raise additional grounds would amount to permitting the appellants to expand the scope of the appeal under remand. The said course is impermissible under facts and in law. The appellants urged new grounds

without any basis in the defence and the grounds of appeal. The appellants are not seeking amendment of their written statement. Therefore, the arguments based on such grounds, which are not pleaded in the defence and the grounds of appeal, are opposed as any such grounds urged without basis cause prejudice to the respondents/plaintiffs. Permitting the additional grounds to be urged not only causes prejudice but also would necessitate retrial and recording of fresh evidence. The 1st appellate Court is justified in dismissing the application of the appellants.”

9. I have gone through the material record. I have given detailed and thoughtful consideration to the facts and submissions.

10. The learned counsel for both the sides relied upon the following decisions:

Decisions cited on behalf of the Appellants:

- (i) Laxmi Chand v. Gram Panchayat, Kararia¹
- (ii) M/s. Mutha Associates v. State of Maharashtra²
- (iii) Rajinder Singh Bhatti v. State of Haryana³
- (iv) Visakhapatnam Urban Development Authority V. S.S.Naidu⁴
- (v) Nellimarla Jute Mills Company, Nellimarla v. Nellimarla Gram Panchayat, Nellimarla⁵
- (vi) Mkt. Committ.Hodal v. Sukhdevi⁶
- (vii) Ibrahim Khan v. Gowram Kondaiah⁷
- (viii) Subbanna v. Kudappa Subbanna⁸

Decisions stated on behalf of the plaintiffs/Respondents:

- (ix) Common Cause v. Union of India⁹
- (x) P.M.A.Metropolitan v. Moram Mar Marthoma¹⁰
- (xi) Ramesh Gobindram v. Sugra Humayun Mirza Wakf¹¹
- (xii) Dhanna Singh v. Baljinder Kaur¹²
- (xiii) Iswar Bhai C.Ptel @Bachu Bhai Patel v. Harihar Behera¹³

¹ AIR 1996 SUPREME COURT 523

² 2013 ALT (Re.) 341 (SC)

³ AIR 2009 SUPREME COURT 2232

⁴ AIR 2016 SUPREME COURT 3024

⁵ 2002 (4) ALD 184

⁶ AIR 2016 SUPREME COURT 2226

⁷ 2004 (7) ALT 140

⁸ AIR 1965 SUPREME COURT 1325

⁹ (2004) 5 Supreme Court Cases 222

¹⁰ AIR 1995 SUPREME COURT 2001

¹¹ (2010) 8 Supreme Court Cases 726

¹² AIR 1997 SUPREME COURT 3720

¹³ AIR 1999 SUPREME COURT 1341

11. Admittedly, these decisions deal with the merits of the subject matter of the first appeal and also with the merits of the issues already raised and issues now being sought to be raised by way of the proposed additional grounds of appeal. While considering the question – ‘whether the appellants shall be permitted to urge additional grounds of appeal in the first appeal? either the Court below or this Court need not examine either the merits of the main matter and the issues/ points that arise for determination in the first appeal or the sustainability and the validity of the grounds of appeal and proposed additional grounds. The only aspect to be considered is as to whether the plaintiffs made out valid and sufficient grounds to permit them to urge additional grounds mentioned in the petition list. The details of the grounds which the appellants now intend to urge before the Court below are already extracted supra. The suit is filed for declaration of title, recovery of possession and mandatory injunction in regard to Ac.0.14 guntas of land. Further, in a suit for declaration of title and recovery of possession, the plaintiff succeeds on his own strength but not on the weakness of the defendants is the settled law. The first appeal was once allowed; however, this Court while allowing the second appeal remitted the matter to the first appellate Court with a direction to dispose of the first appeal afresh after considering the additional evidence produced. The Court of first appeal is the last Court of fact is not in dispute. Therefore, the 1st appellate Court is required to consider the pleadings and the evidence and weigh and evaluate the evidence on record afresh and give its independent findings supported by reasons. As per settled law, the 1st appellate Court’s judgment has to show that it applied its mind to the case and that a serious and sincere effort has been made for analyzing the various points involved for determination. The law is well settled that a ground inconsistent with the original plea shall not be permitted to be raised in the first appeal. (See: C.S.Nataraja Pillai v.

C.S.Subbaraya Chettiar¹⁴). In this cited decision of the Privy Council it was held as follows: “It appears, therefore, that the appellants have been compelled to depart altogether from the only grounds upon which they maintained their defence in the Courts in India and that they now attempt to found their appeal against; the decision of those Courts upon a ground which was neither maintained nor maintainable upon the pleadings in those Courts. No doubt it is true that it was for the respondent to make out to the satisfaction of the Court that he had a title which would warrant an order for delivery of possession to him. That he succeeded in doing. The appellants cannot oppose to that order a claim based upon possession, which is contradicted by their own pleadings, and their appeal cannot be maintained.” The 1st appellate Court should not make out a new case for a party. [See: Kedar Nath Motani and Ors. v. Prahlad Rai and Others [AIR 1960 SC 213] wherein it was held that ‘it is not open to a Court in appeal to consider media concludendi not pleaded by a party and to give judgment on their basis’). Be it noted that ‘media concludendi’ is a Latin phrase and it is the plural of ‘medium concludendi’ and it means ‘the grounds of action’. Further, a ground not raised in the memorandum of grounds may be permitted to be urged in the discretion of the first appellate Court if such a course does not prejudice the opposite party. (See: Kalyanpur Lime Works Ltd. Vs. State of Bihar¹⁵). Further, a question relating to jurisdiction arising on the face of the record can be permitted to be urged in the first appeal. (See: Rajah of Vizianagaram v. Official Receiver and Official Liquidator of Vizianagaram Mining Co. Ltd.¹⁶). A question of law arising out of the facts of the case also can be permitted to be raised in the first appeal. If the grounds urged in the first appeal though not pleaded deal with a pure question of law and when the grounds urged being questions of law arising out of the facts of the case, such grounds also can be

¹⁴ AIR 1949 PC 43

¹⁵ AIR 1954 SC 165

¹⁶ AIR 1962 500 (F.B)

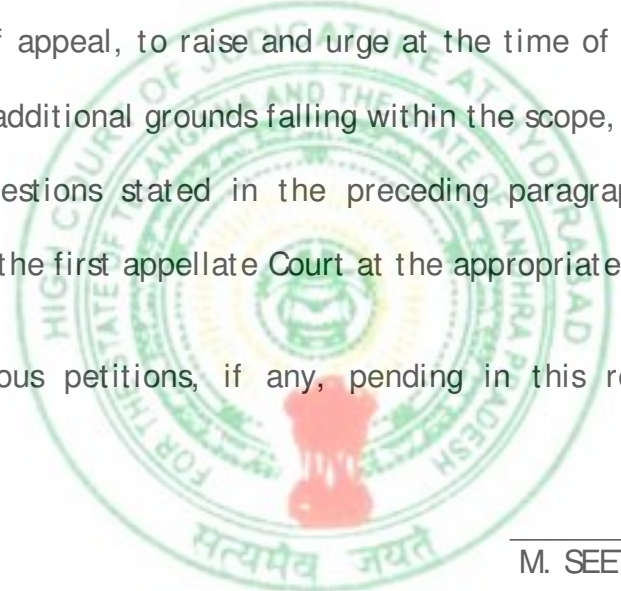
permitted to be urged. “There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. (See: *M/s Sanghvi Reconditioners Pvt. Ltd. v. Union of India and Ors.*: AIR 2010 SC 1089; and *Greater Mohali Area Development Authority and Ors. v. Manju Jain and Ors.*: AIR 2010 SC 3817).” (See: *National Textile Corporation Ltd., v. Naresh Kumar Badrikumar Jagad and Ors.*: AIR 2012 SC 264)

12. The Court of first appeal, which is the last Court of fact, is yet to dispose of the appeal on merits. In this revision arising out of an interlocutory order refusing permission to the appellants to accord permission to urge additional grounds of appeal, it is not just and fair and it is also not permissible, in the well considered view of this Court, to marshal the facts and evaluate the evidence and state precisely as to what are the grounds of appeal and additional grounds of appeal that can be permitted to be urged in the first appeal as such a course would involve detailed examination of the points involved for determination in the first appeal. Hence, this Court is of the view that it would suffice if the revision petition is disposed of by stating the broad parameters for urging the additional grounds of appeal at the time of hearing of the first appeal by the first appellate Court. On the above analysis and in the light of the settled legal position, it is trite to dispose of this revision petition with appropriate directions, as such a course sub-serves the ends of justice. Having regard to the aforestated reasons, in the well considered view of this Court, the appellants can be permitted to urge at the time of hearing of the first appeal the following additional grounds of appeal, without the necessity of further explicit permission from the Court: (i) the grounds which are pure questions of law and also such pure questions of law arising out of the

facts of the case; (ii) the questions relating to jurisdiction and limitation, if arise on the face of the record without any necessity of relegating the parties to amend the pleadings and adduce evidence, which can be permitted by the 1st appellate Court having regard to the pleaded facts and evidence brought on record and circumstances of the case; (ii) any new ground raising a pure legal issue for which no inquiry/ proof is required and which can be permitted to be raised by the Courts at any stage of the proceedings.

13. Accordingly, the Civil Revision Petition is disposed of and the impugned order of the Court below is modified directing the first appellate Court to permit the appellants, however, without the necessity of seeking amendment of the grounds of appeal, to raise and urge at the time of hearing of the first appeal the new/ additional grounds falling within the scope, realm and compass of the three questions stated in the preceding paragraph for appropriate consideration by the first appellate Court at the appropriate stage.

Miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.



M. SEETHARAMA MURTI, J

06th January, 2017
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