

THE HON'BLE SRI JUSTICE S.V.BHATT
CIVIL REVISION PETITION No.4548 OF 2017

ORDER:

Heard Sri S.Syam Sunder Rao, for the petitioner.

2. The plaintiff, in O.S.No.524 of 2010 in the Court of Additional Senior Civil Judge, Kurnool, is the revision petitioner. On 01.12.2010, the petitioner filed O.S.No.524 of 2010 for specific performance of agreement of sale, dated 15.03.2010, directing the defendants to execute a registered sale deed for the plaint schedule property by receiving the balance sale consideration of Rs.40,000/-

3. The first defendant-1st respondent, on 18.04.2011, filed written statement on the allegations of execution of suit agreement, payment of part consideration etc. The stand of first defendant reads thus:

“Agreement of sale in favour of the plaintiff and payment alleged are correct. On behalf of the plaintiff, the second defendant acted as commission agent. He arranged the bargain with the plaintiff. The plaintiff and the second defendant entered into agreement with regard to payment of commission. The second defendant gave a Xerox Copy of the said arrangement of payment of commission between the plaintiff and the second defendant. According to the bargain and arrangement made by the second defendant, this defendant executed the suit agreement of sale in favour of the plaintiff. Subsequently, the second defendant made a false representation to this defendant alleging that he was authorised by the plaintiff to pay the balance sale consideration and take a sale deed in his favour on behalf of the plaintiff with a view to sell the property later to others. This defendant believed the said representation and accordingly executed the sale deed in favour of the second defendant. The second defendant is now using the said sale deed as if he originally entered into sale arrangement

with this defendant. The original advance was not paid by the second defendant, but it was paid only by the plaintiff. Even subsequently also, the second defendant did not make any further payment, except balance sale consideration that was due under the agreement of sale in favour of the plaintiff. The allegations contra by the second defendant now are not true. The second defendant played a trick with this defendant and got the sale deed in his favour. It is not valid. This defendant is a villager and illiterate person and was not aware of the deceit played by the second defendant. Only the plaintiff is the real purchaser. Privity of contract with this defendant is only by plaintiff.”

4. On 24.03.2011, the second defendant filed written statement and the stand of the second respondent reads as follows:

“This 2nd defendant is native of Peddapadu Village of Kallur Mandal of Kurnool District, owing lands and house at Peddapadu village and this 2nd defendant is also residing at Hyderabad. In addition to agricultural income, this 2nd defendant is also having other source of income. This 2nd defendant is also a Film Producer and Managing Director of film producing company called ‘Neena Creations’. As the plaint schedule land is near to the land of this 2nd defendant and to augment the extent of land, this 2nd defendant purchased the plaint schedule land under registered sale deed, dated 21.10.2010 and ever since this 2nd defendant is in possession and enjoyment of the plaint schedule land. In addition to the consideration paid as per sale deed, this defendant had also incurred so much amount for clearing the dues due by the 1st defendant to S.C. Finance Corporation, Kurnool and to get pass-book etc., which were kept in the said corporation. Further without prejudice to the rights of this 2nd defendant. It is submitted that this defendant is bonafide purchaser having paid considerable consideration to the 1st defendant who is a lawful owner of the plaint schedule land without notice the alleged agreement of sale and as such the alleged sale agreement is not binding on this defendant as the plaintiff did not acquire any rights what so ever under so called agreement of sale. The plaintiff has no right or authority to question the sale deed executed by the 1st defendant in

favour of this 2nd defendant and this 2nd defendant is in possession of the plaint schedule land. It is reiterated that the alleged agreement of sale, dated 15.3.2010 forming basis of the suit and has no legal significance being concocted and invalid and cannot be countenanced legally or otherwise under any circumstances.”

5. Issues are framed and admittedly, the parties have joined trial on the issues framed for decision, trial is completed and suit is posted for arguments. On 31.12.2016, the revision petitioner filed the instant application i.e., I.A.No.69 of 2017 in O.S.No.524 of 2010 to permit him to amend paragraph 4 of plaint proposed amendment, which reads as follows:

“and entered into a Memorandum of Understanding dated 15.03.2010 regarding the Commission payable to the second defendant.”

6. The prayer for amendment was opposed by the second respondent herein. The trial Court through the order impugned in the revision petition, rejected the prayer for amendment. Hence, Civil Revision Petition.

7. The counsel for the petitioner does not dispute the chronology of events referred to above. According to him, even assuming that the suit is posted for arguments, the C.P.C is meant for administration of justice and it is more intended for furthering the object of fair trial in a suit. In the case on hand, even assuming for argument sake that pleadings are completed, trial is over, still by affording opportunity to the petitioner by allowing the prayer for amendment, no prejudice would be caused to contesting respondent. He relies on the decision of Apex Court in Civil Appeal No.2366 of 2010, dated 14.05.2015, wherein at paras 18 and 20 are excerpted for reference:

“18. While rejecting the amendment petition, the High court observed as under:

16. During the course of hearing an application is filed by the respondents under Order 6 Rule 17 CPC for amendment to the effect that the respondents Dinesh, Satish, Sanjay and Rajendra fails under Class XVII of the Madhya Pradesh Land Revenue Code. This amendment, at this stage, in fact cannot be allowed because the same is going to totally change the nature of the suit. The suit is filed in the year 1964 the suit was filed on the premises that Ramkali Devi has inherited the property from Ajudhibai on the basis of will. By the amendment in the pleadings Dinesh, Satish, Sanjay and Rajendra have joined as party. That amendment was incorporated on 18.7.1994 and their names were added as plaintiffs in the suit. In the cause title also the word plaintiff is substituted by the word plaintiff. However, there is no amendment in the averments made in the rest of the pleadings in the plaint. In such circumstances, now, it will not be in the interest of justice to allow the application for amendment which totally goes to change the premises of the suit after a lapse of more than 40 years. In the present case the plaintiffs have based their title solely on the basis of a will executed by Ajudhibai and, therefore, allowing an application for amendment making claim on the basis of inheritance that too through Hardayal cannot be permitted at this stage. Hence, the amendment application is rejected.

20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.”

8. At the out set, this Court would like to remark that the observations of the Apex Court in the decision referred to above are

well established and there may not be a disagreement, *vis-à-vis* the scope and object of the procedural laws. Before examining the reasons for accepting the prayer for amendment, I would like to examine the proposed amendment by exactly putting in place the proposed amendment in the same manner the plaintiff prays in the instant application. The sentences in paragraph 4 of the plant read thus:

“.....But, second defendant, by playing a deceit, lured the first defendant falsely representing to her that plaintiff asked him to take the sale deed in his favour by paying the balance of Rs.40,000/- and took a sale deed dated 21.10.2010 from the first defendant in his name for the plaint schedule property and entered into a Memorandum of Understanding on 15.03.2010 regarding commission payable to the second defendant.” (emphasis added)

9. The learned trial Judge framed the following point for consideration:

Whether the petitioner/plaintiff can be permitted to amend plaint as mentioned in the petition, as prayed for by him. The decisions relied on by both parties are considered and the gist of the findings recorded by the trial court is as follows:

“[k] In view of the above discussion, this Court concludes and holds that the Petitioner/Plaintiff has failed to explain as to why he could not seek the Proposed Amendment earlier, and his silence from the date of filing of the Written Statement of the Respondent No.1/Defendant No.1, wherein a Xerox Copy of the alleged Agreement of Understanding was filed by her, till the date of filing this Petition; and that since the material ingredient of due diligence itself is not established by the Petitioner/Plaintiff, the question of permitting him to amend the Plaint, as mentioned in the Petition, does not arise. Therefore, this Court holds that the Petitioner/Plaintiff is not entitled to amend the Plaint, as prayed for by him.

Hence, the *Point is answered against the Petitioner/Plaintiff.*”

10. The petitioner challenges the order of trial Court in I.A.No.69 of 2017. First and foremost, the petitioner to be successful in the revision satisfies this Court that the order impugned in the revision suffers from jurisdictional error warranting interference under Article 227 of the Constitution of India. Admittedly, except relying on the decision of the Apex Court referred to above, no exception has been brought to the notice of this Court or an illegality in the reasoning of trial Court is pointed out. Be that as it may, from the totality of the circumstances, the amendment by way of inclusion of second sentence to paragraph 4 of the plaint results in change of the cause of action virtually amounts to re-opening the trial. I am satisfied with the reasons recorded by the trial Court and no ground is made out for interfering with order impugned in the revision. The Civil Revision Petition fails.

11. In the result, the Civil Revision Petition is dismissed. Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

SEPTEMBER 12, 2017
YVL

JUSTICE S.V. BHATT

THE HON'BLE SRI JUSTICE S.V.BHATT



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Dt: 12.09.2017

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