

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**CIVIL REVISION PETITION No.483 OF 2013****ORDER:**

This Civil Revision Petition is filed against the order dated 30.11.2012 passed in I.A.No.1268 of 2012 in O.S.No.26 of 2007 on the file of the Court of District Judge, Vizianagaram.

The brief facts of the case according to the petitioner are as follows:

The respondents herein who are the plaintiffs in the suit filed O.S.No.26 of 2007 on the file of the Court of the District Judge, Vizianagaram for specific performance of agreement of sale dated 26.11.2005 for an extent of Ac.9.03 cents and other reliefs under Order VII Rule 1 and Section 26 of C.P.C. Subsequently, the respondents herein filed I.A.No.618 of 2011 in O.S.No.26 of 2007 under Order 6 Rule 17 of C.P.C read with Rule 28 of Civil Rules of Practice to delete 11 survey numbers in an extent of Ac.7.73 cents and an extent of Ac.9.03 cents has to be substituted by Ac.1.30 cents on the ground that the remaining Ac.7.73 cents is D-Form patta land, which cannot be alienated. A direction was also sought to return the excess advance amount paid to the extent of Rs.3,20,000/-. The said I.A was dismissed on the ground that the plaintiff has not filed the documents to prove that the said Ac.7.73 cents is D form patta land and also on the ground that Rule 28 of Civil Rules of Practice was not followed. The order in the said I.A was challenged by way of C.R.P.No.1454 of 2012 before this Court and the said C.R.P was disposed of on 14.06.2012 giving liberty to the plaintiff to file a fresh application seeking amendment along with necessary documents.

Pursuant to the said order, I.A.No.1268 of 2012 in O.S.No.26 of 2007 was filed.

A counter-affidavit was filed to the said I.A stating that there is no right to spilt the contract into two parts and seek for performance of one part. It is further stated that the documents on which the reliance is sought do not conclusively establish the classification of the land since registrations are being done right from 2003 to 12.02.2007 i.e. till the filing of the suit.

The said I.A. No.1268 of 2012 was allowed on 30.11.2012 and against the said order, the present C.R.P is filed.

Heard both the learned counsel.

The said I.A was allowed observing thus:

“At this juncture, it is relevant to note that the respondent is not disputing the classification that Ac.07,73 cents of land is D-patta land, out of the land covered under an agreement of sale dated 26.11.2005, after filing of the document i.e., certified copy of the revenue record by the plaintiffs. The defendant filed the three certified copies of General Power of Attorneys-cum-agreement of dated 12.02.2007, 19.04.2005 and 13.07.2005 respectively. Nowhere it is mentioned in these documents that the subject matter of these documents is a ‘D-patta’ land. Even if the Sub Registrar, Bhogapuram affects registration and property is delivered to the plaintiffs, the Government will take action against the occupants of D-Patta land in accordance with the provisions of Act 9/1977. Besides this fact, no document is filed before the Court that the Registration was affected for D-patta land by the Sub Registrar, Bhogapuram either prior to or subsequent to the year 2007. Therefore, on this ground, the defendant cannot resist the plaintiffs’ application for amendment.

12. Thus, it has been established by the plaintiffs that out of Ac.09.03 cents of land covered under agreement of sale dated 26.11.2005, Ac.07.73 cents is D-patta land and only Ac.01.30 cents is Zeroyathi land and this amendment sought for in this petition is necessary to resolve the

controversy between the parties. Therefore, I am inclined to allow this petition.”

Notice before admission was given on 12.04.2013 and interim stay for a period of two months was granted initially and later on it was extended for a further period of four weeks on 07.06.2013. Subsequently Vacate Stay petition was filed by the respondents herein stating that the petitioner is having full knowledge about the D form patta and cheated him as there is prohibition for alienation of D form patta land under the provisions of A.P. Assigned Land (Prohibition of Transfers) Amendment Act, 1977. It was also stated that even if D form patta land is alienated, the same shall be declared as illegal.

The learned counsel for the petitioner contended that the proposed amendment was sought admittedly after the trial has commenced and that proviso to Rule 17 Order 6 of C.P.C comes into play and therefore allowing the amendment without recording any finding as regards due diligence smacks of arbitrariness and liable to interdicted.

Learned counsel for the respondent who is the plaintiff in the suit contended that he cannot be forced to take D form patta land and that the learned Trial Court considered the status of the land and rightly allowed the amendment petition.

Learned counsel for the petitioner also relied on a judgment reported in **B. Sreenivasulu v. B. Kusuma Kumari and others**¹ wherein it is observed as follows:

“15. Considering these aspects and the fact that Trial Judge has not given any finding as to the compliance of proviso under Order VI Rule 17 of the Code to the case on hand in spite of observation by this Court while remitting the matter, I

¹ 2016 (6) ALD 120

am of the view that the impugned order dated 11.04.2016 cannot be sustained and it is contrary to proviso of Order VI Rule 17 of the Code.”

Order 6 Rule 17 deals with the amendment of pleadings. The said Rule says that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings. In such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The proviso to the said Order 6 Rule 17, which is relevant to this case reads as follows:

“provided that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial.”

A reading of the provision shows that the Court has to come to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In the affidavit filed along with the I.A.No, it is stated that he has obtained the certified copies of adangal pahanies relating suit schedule property to show that Ac.7.73 cents is D form patta land and he also filed the copies of the same before the trial Court. In the affidavit filed along with the present C.R.P, it is specifically stated that the said application was filed after the trial in the suit was commenced. In the Vacate Stay petition, this fact is not denied. Hence, this Court can presume that the said application was filed after the trial has commenced. When the trial has commenced, the proviso to Order VI Rule 17 comes into play. According to the said proviso the Court has to come to a

conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. In the impugned order, the learned trial Judge did not make any observation with regard to the due diligence of the respondent.

According to proviso to Order VI Rule 17 of C.P.C, no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that, in spite of due diligence, the party could not have raised the matter before the commencement of trial. It is obligatory on the part of the learned Trial Judge to record its conclusion, that in spite of due diligence the party could not have raised the matter before the commencement of the trial. Since the learned Trial Judge did not record his conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial, the matter is remanded back to the learned Trial Judge to pass appropriate orders in the said application in accordance with law within a period of one month from the date of receipt of copy of this order.

Accordingly, the civil revision petition is allowed setting aside the order dated 30.11.2012 passed by the learned District Judge, Vizianagaram in I.A.No.1268 of 2012 in O.S.No.26 of 2007. As the suit is of the year 2007, the learned Trial Judge is directed to dispose of the suit itself as expeditiously as possible preferably within a period of three months from the date of receipt of the copy of this order. No order as to costs.

Consequently, Miscellaneous petitions, if any pending, shall stand closed.

KONGARA VIJAYA LAKSHMI,J

Date:27.10.2017.
Gk.



HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

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