

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No.2006 of 2017

ORDER :

This Civil Revision Petition, under Article 227 of the Constitution of India, is preferred against the order dated 29.09.2016 in I.A.No.841 of 2016 in A.S.No.102 of 2012 passed by the Motor Accidents Claims Tribunal (Special Judge for Trial of Cases under SCs & STs (POA) Act-cum-Additional District Judge, Vizianagaram District (for brevity "the lower appellate Court"), whereby the lower appellate Court dismissed the application filed by the petitioner/appellant under Order VI Rule 17 and Section 151 of C.P.C., read with Rule 28 of Civil Rules of Practice, seeking permission for amendment of the plaint to amend the Schedule in the plaint, at the stage of appeal.

2. The revision petitioner is the plaintiff in the suit being O.S.No.203 of 2005 on the file of the Senior Civil Judge, Vizianagaram, for specific performance of the agreement of sale dated 05.02.2004 (Ex.A.1), in respect of Plaint Schedule Property of Ac.0.65 cents in S.No.5/5 of Rangarayapuram Village. The said suit was dismissed by judgment and decree dated 01.11.2011, directing respondent Nos.1 to 3 and 5 to refund the advance amount of Rs.75,000/- to the plaintiff, as Ex.A.1 was not signed by defendant No.4, who sold the

property to an extent of Ac.0.19 cents of his share to defendant No.6 under registered Sale Deed dated 06.02.2004 i.e., on the next day of execution of Ex.A.1. Aggrieved by the said judgment and decree dated 01.11.2011 in O.S.No.203 of 2005 passed by the trial Court, the petitioner/plaintiff preferred an appeal suit in A.S.No.102 of 2012 on the file of the Motor Accidents Claims Tribunal (Special Judge for Trial of Cases under SCs & STs (POA) Act-cum-Additional District Judge, Vizianagarm District (for brevity “the lower appellate Court”). In the said appeal suit, the petitioner/plaintiff filed an application in I.A.No.841 of 2016 in A.S.No.102 of 2012 under Order VI Rule 17 and Section 151 of C.P.C., read with Rule 28 of Civil Rules of Practice, seeking permission to amend the Schedule in the plaint requesting to exclude Ac.0.19 cents of land sold by Defendant Nos.4 to 6 to enable her to describe the plaint schedule correctly to seek specific performance of Agreement of Sale under Ex.A.1.

3. Respondent No.5 filed counter denying the material averments of the petition, which was adopted by respondent Nos.2 to 4 and 7 to 12, stating that the petition is not maintainable, as the same is filed without any bonafides at the appellate stage and the petitioner cannot be permitted to fill-up the lacunas and get over her admissions. It is also contended that if the amendment is allowed, the entire structure of the case and nature will be changed, thereby

causing lot of prejudice to the respondents and advantage to the petitioner/appellant and hence sought for dismissal of the said petition.

4. The lower appellate Court considered the decisions of the Hon'ble Supreme Court, relied upon by the learned counsel for respondents in REVAJEETU BUILDERS AND DEVELOPERS Vs. NARAYANASWAMY & SONS¹ and RAM NIRANJAN KAJARIA Vs. SHEO PRAKASH KAJARIA AND OTHERS², wherein it was held that categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment and any amendment to the pleadings is subject to the provisions under Order VI Rule 17 of C.P.C. The lower appellate Court also considered the decision of the High Court of Judicature at Hyderabad relied upon by the learned counsel for the petitioner/plaintiff in G.S. PRAKASH Vs. POLASA HANUMANLU³ with regard to the cases in which amendments can be allowed and the cases in which amendments have to be rejected.

5. On a consideration of the material available on record, the lower appellate Court dismissed the said application, by the impugned order dated 29.09.2016, observing that the petitioner/plaintiff was not diligent enough to prosecute her case by filing a petition for amendment during the pendency

¹ (2009) 10 SCC 84

² (2015) 10 SCC 203

³ 2015 (2) ALT 594

of the suit before the lower Court and that the petitioner cannot throw entire blame on her Advocate for not showing the correct schedule. It is also observed that if the proposed amendment is allowed, it will change the nature of suit, which causes great prejudice to the case of respondents and it amounts to filling up of lacunas in the case of the plaintiff. The lower appellate Court further observed that even assuming that the case of the petitioner is accepted in appeal, that relief can be granted by excluding the property sold by defendant Nos.4 to 6. Aggrieved by the same, the present Civil Revision Petition is filed by the petitioner/plaintiff.

6. Heard Ms. T.V. Sridevi, learned counsel for the petitioner/plaintiff as well as Sri G. Rama Gopal, learned counsel for the respondents and perused the material available on record.

7. The observations of the lower appellate Court in the impugned order clearly reveal its intention in passing the said order, rejecting to give permission for amendment of the plaint. In fact, the petitioner/plaintiff sought for amendment of plaint by deleting Ac.0.19 cents, out of Ac.0.65 cents of plaint schedule property, as the said extent was already sold by defendant Nos.4 to 6 and, therefore, that extent of the property was not available for specific performance of Agreement of Sale dated 05.02.2004 under Ex.A.1. As a matter of fact, this fact came to the notice of the

petitioner/plaintiff subsequent to the execution of Agreement of Sale under Ex.A.1. However, the lower appellate Court has given a clear and categorical finding in para-12 of the impugned order dated 29.09.2016 that even if the case of the petitioner is accepted that Ac.01.9 cents of land was sold away and it was not available for specific performance of the Agreement of Sale, that portion of the property can be deleted and the remaining portion can be decreed, in the event the petitioner establishes that she has a case. The said finding of the lower appellate Court itself would indicate that if the petitioner has got a case to succeed and if she establishes that specific performance of the Agreement of Sale was executed duly and that the property of Ac.0.19 cents was sold by defendant Nos.4 to 6, the remaining extent of the property can be considered for specific performance of the Agreement of Sale under Ex.A.1.

8. Therefore, the impugned order passed by the lower appellate Court is very clear on this aspect and there is no need to allow the amendment petition filed by the petitioner/plaintiff under Order VI Rule 17 of C.P.C., at the appellate stage. The petitioner/plaintiff is at liberty to prove the facts before the trial Court with regard to the sale of Ac.0.19 cents made by defendant Nos.4 to 6 and that portion of the property was not available for specific performance of the Agreement of Sale under Ex.A.1.

9. With the aforesaid observations, this Civil Revision Petition is disposed of. No order as to costs.

10. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

11.08.2017.
Msr



HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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