

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.1264 OF 2018

ORDER :

This Civil Revision Petition is filed assailing the order dt.08.02.2018 in I.A.No.919 of 2017 in O.S.No.63 of 2009 of the Senior Civil Judge, Srikalahasthi, Chittoor District.

2. Petitioners are defendants in the above suit. The respondent/plaintiff filed the said suit against the petitioners/defendants for perpetual injunction restraining the petitioners from interfering with his peaceful possession and enjoyment of the plaint schedule property.

3. It is contended by the respondent/plaintiff that he purchased the properties from one V.Subbamma under registered sale deed dt.07.03.2007 and has been in possession of the plaint schedule property, but the petitioners, who are strangers to the plaint schedule property and have no right title or interest in the property, are trying to dispossess him from the plaint schedule property.

4. Written statement was filed by the petitioners opposing the suit claim. In the written statement, a plea was raised that the said Subbamma had executed agreements of sale in respect of the plaint schedule property on 08.08.1996 in favour of father of the petitioners 2 & 3 and their uncles by name Muthyalaiah and Seetharamaiah after receiving sale consideration, that they were in possession of the property, and that subsequently two

registered sale deeds were executed in favour of the petitioners 2 and 3 on 20.04.2006 by the said Subbamma.

5. Thereafter the said suit was transferred to the Court of Principal Senior Civil Judge, Srikalahasthi and renumbered as O.S.No.63 of 2009.

6. The respondent filed I.A.No.706 of 2008 seeking amendment of the plaint seeking relief of declaration of his title and also a declaration that sale deeds dt.20.04.2006 standing in the name of petitioners 2 and 3 are null and void, and are not binding on him. It was allowed on 20.04.2009.

7. An additional written statement was filed to the amended plaint by the petitioners stating that the allegations made against them are false. In the additional written statement they further pleaded that the respondent had made a complaint before the Director of Stamps and Registration for cancellation of petitioners' documents executed by V.Subbamma, that the said authority without conducting any enquiry and without having jurisdiction cancelled the same, that they approached this Court and this Court directed the authority to withdraw the said order of cancellation; and therefore the sale deeds obtained by the petitioners 2 and 3 stand good and binding the respondent.

8. It is also stated that the Sub-Registrar, Srikalahasthi lodged a complaint against the petitioners and their family

members which was numbered as C.C.No.254 of 2007. Thereafter, the trial was commenced and the trial was going on.

9. At that point of time, the respondent/plaintiff filed I.A.No.919 of 2017 to further amend the plaint by adding paras 8 (a), (b) and (c). In these paragraphs, which are sought to be inserted in the amended plaint, the respondent sought to give details of criminal cases initiated by the office of sub-Registrar against the petitioners specifically taking plea that after filing of the suit, the respondent came to know about the fraud played by the petitioners in impersonating Subbamma, and the criminal proceedings initiated in C.C.No.254 of 2007 before the Additional Junior Civil Judge Court, Srikalahasthi. He also adverted to the fact that the thumb impression of Subbamma found on the sale deeds executed in favour of the petitioners 2 and 3 on 20.04.2006 were not identical with the specimen thumb impression of Subbamma, and that the petitioners 2 and 3 had created the said sale deeds, which were not actually executed by Subbamma, obviously by forgery and impersonation. He also referred to filing of supplementary charge sheet and other subsequent events including filing of O.S.No.41 of 2012 against the respondent by the relatives of petitioners 2 and 3.

10. This application was opposed by the petitioners stating that the proposed amendments would alter the entire structure of the suit and cause serious prejudice to them, since they are filed at a belated stage, after lapse of ten years of filing of the

suit. They contended that the respondent was aware of the averments now sought to be made in the amendment application even prior to filing of the suit and he did not exhibit due diligence. It is contended that after adducing of evidence by both sides, this application has been filed to fill up the lacunas in respondent's case and that the proviso under Order VI Rule 17 CPC bars the proposed amendment.

11. By order dt.08.02.2018 the Court below rejected the objection of the petitioners and allowed the application for amendment. After taking note of the fact that the application for amendment has been filed at the fag end of trial, it held that the averments in the application for amendment showed subsequent events which happened during the pendency of the suit, such as a Finger Prints Expert's opinion that the thumb impression of Subbamma taken in Open Court and the thumb impression on the sale deed dt.20.04.2016 executed in favour of the petitioners 2 & 3 were not identical and therefore the proposed amendments are relevant for deciding the main suit and the application for amendment ought to be allowed. It further held that no prejudice would be caused to the petitioners since cross-examination was conducted by both parties to the witnesses examined in the main suit touching all aspects including those proposed to be introduced by way of amendment in the plaint. It also noted that the purpose of permitting amendment is to shorten the litigation and the subsequent events which took place during pendency of suit

ought to be allowed to be incorporated in the pleadings under Order VI Rule 17 CPC, particularly, when such amendments are sought for the purpose of bringing on record the facts relevant to decide the real question in controversy between the parties. It also relied on the judgment of this Court in ***Pankaja and Another v. Yellapa(died) by LRs. And Others***¹. However, it imposed costs of Rs.1,000/- on the respondent for filing the application belatedly.

12. Assailing the same, this Revision is filed.

13. Counsel for petitioners contended that there is no consideration of the question, whether due diligence was shown by the respondent or not, by the Court below while allowing the application for amendment; that respondent was aware of the events pleaded in the application for amendment even prior to the filing of the suit; and therefore the application to amend the plaint ought to have been rejected by the Court below in view of the proviso to Order VI Rule 17 CPC. He also placed reliance on ***Ajendraprasadji N.Pandey and another v. Swami Keshavprakeshdasji N. and others***², ***Revajeetu Builders and Developers v. Narayanaswamy and Sons and others***³, ***Muthukur Gram Panchayat rep. by its Executive Officer v. Kakuturu Ramesh Reddy and others***⁴, ***Narani Jangaiah***

¹ 2016(1) ALD 437

² 2006(12) SCC 1

³ 2009(10) SCC 84

⁴ 2014(2) ALT 526

***and others v. Pasham Anjaneyulu and others*⁵, and *P.Durga Reddy and another v. B.Yadi Reddy*⁶.**

14. Counsel for respondent however supported the order passed by the Court below and contended that when several subsequent events occurred after filing of the suit, which indicate the fraud played by the petitioners by forging the thumb impression of the vendor of the respondent, by name Subbamma, the respondent was entitled to seek amendment of the plaint to expose such fraud, and in these circumstances the order passed by the trial Court cannot be found fault with.

15. I have noted the contentions of both sides.

16. From the facts narrated above, it is clear that title to the property in question also incidentally arises in the suit between the parties since the prayer for declaration of title has already been allowed to be introduced by the Court below in I.A.No.706 of 2008 on 20.04.2009.

17. Both parties claim title through Subbamma while the respondent's sale deed is dt.07.03.2007, the sale deeds set up by the petitioners 2 and 3 are dt.20.04.2006.

18. It is not in dispute that the respondent and his vendor, Subbamma, had given a complaint with Sub-Registrar that Subbamma had not executed the sale deeds dt.20.04.2006 in favour of petitioners 2 & 3, and an FIR was registered on the

⁵ 2015(4) ALD 1

⁶ 2015(4) ALD 420

complaint of the Sub-Registrar, Srikalahasthi and ultimately, CC.No.254 of 2007 was registered after obtaining expert opinion that the thumb impression found on the sale deeds dt.20.04.2006 set up by the petitioners was not that of Subbamma.

19. These events having occurred after filing of the suit and this material having already come on record in the chief examination of PW1, and PW1 having already been cross-examined by the petitioners, it cannot be said that these subsequent events cannot be brought on record by way of amendment of pleadings to expose the alleged fraud played by the petitioners, particularly, when no prejudice is caused to the petitioners as rightly held by the Court below.

20. Of course, this Court is not expressing any opinion as to whether the respondent was aware of the fact sought to be brought on record in the amendment application only after filing of the suit and the matter may have to be gone into by the Court below during trial since it is specifically denied by the petitioners. However, the Court below could not have gone into the said issue while considering the application I.A.No.919 of 2017, because it is settled law that the correctness of the pleadings sought to be introduced by way of amendment cannot be gone into by the Court while deciding whether or not to allow the said amendment.

21. (i). The decision in **Ajendraprasadji N.Pandey's** case(2 supra) would not apply because in that case the defendants sought to introduce in the written statement matters which were within their knowledge, but which had not been included in the written statement earlier. In the present case, whether the respondent had knowledge of the events sought to be introduced by way of amendment is a matter to be gone into in the trial and cannot be gone into now. Therefore, the said judgment has no application.

(ii) The decision in **Revajeetu Builders and Developers's** case (3 supra) would have no application because the suit in the said case was filed prior to the amendment of the Civil Procedure Code in 2002.

(iii) In the decision in **Muthukur Gram Panchayat's** case (4 supra) the amendment sought to be introduced in the prayer for declaration of title, which was not originally taken in the suit, and the Court in that case took the view that the plaintiff cannot seek such an amendment after trial commenced. The plea of declaration of title sought in the said matter being in the nature of essentially an amendment of prayer, may be the said view is correct; but when the facts subsequent to filing of the suit are introduced, particularly, those relating to alleged fraud played by the petitioners, the said judgment cannot have any application.

(iv) In **Narani Jangaiah's** case(5 supra) the application for amendment of plaint was sought after the conclusion of the trial. There also it was a case of amendment of prayer by seeking declaration of title in a suit initially filed for perpetual injunction. Admittedly, here when the application for amendment was filed, the trial had not concluded and the matter was at the fag end of trial. In any event, the events subsequent to filing of the suit are sought to be brought on record here. Therefore, the said judgment has also no application.

(v) In **P.Durga Reddy's** case (6 supra) the application for amendment of plaint was allowed and this Court refused to interfere with it, though it was filed at a belated stage on the ground that there was clubbing of suits. Therefore, the said decision also cannot come in the way of granting any relief to the respondent herein.

22. In the facts and circumstances of the present case, had the amendment not been allowed, it would have lead to multiplicity of proceedings, thereby, delaying the resolution of the dispute between the parties for a further point of time, which is not in the interest of justice.

23. Therefore for all the aforesaid reasons, I see no reason to interfere with the order dt.08.02.2018 in I.A.No.919 of 2017 in O.S.No.63 of 2009 of the Senior Civil Judge, Srikalahasthi.

24. Accordingly, this Civil Revision Petition is dismissed. No costs.

25. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

13th March, 2018.

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