

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITIONS No. 1303 & 1315 OF 2018

COMMON ORDER :

Both these Revisions arise out of the common order dated 15.02.2018, whereby and whereunder I.A.Nos. 85 and 86 of 2018 taken out by the petitioner, who is the plaintiff in O.S.No. 181 of 2009 on the file of the Junior Civil Judge's Court at Tadipatri, seeking amendment of the plaint and to reopen the suit, were dismissed.

The petitioner - plaintiff filed the suit for declaration of title and cancellation of the sale deed dated 26.08.2008 alleged to have been executed by her father in favour of the 1st respondent, on the ground that it is a forged document. While so, the petitioner now seeks to amend the plaint by adding para 6(a), which reads as under:

“The plaintiff further submits that the plaint schedule mentioned property is the ancestral property. The plaintiff and her father P.U. Bhaskar Naidu are having joint half share in the plaint schedule mentioned property. The plaintiff's father is not the absolute owner of the property. He has no right to sell entire plaint schedule mentioned property without consent or knowledge of the plaintiff. To the knowledge of the plaintiff, her father has not sold and not executed any sale deed much less alleged sale deed dated 26.08.2008 in respect of the suit schedule mentioned property. The sale deed dated 26.08.2008 might be created by the 1st defendant by forging signature of the plaintiff's father. Even if the alleged sale dated 26.08.2008 is true and correct, the same is not for the legal necessity of the joint family and so the same is not binding on the plaintiff since she is having joint half share in the property. The alleged sale consideration was not utilized for the joint family.”

The learned Judge, while dealing with the Applications, reasoned that the amendment was sought belatedly i.e. after

commencement of trial and that the plea taken by the petitioner that the proposed amendment was not sought, by mistake, could not be accepted, as the recitals in the plaint seem to be consciously employed and the legal notice addressed to the respondents - defendants contains the proposed amendment recitals and therefore, it appears the recitals were deliberately not carried in the plaint. Hence, dismissed the Applications.

Heard learned counsel for the petitioner.

A perusal of the material available on record and the order under Revision discloses that the petitioner – plaintiff had come to the Court, at the first instance, with a definite pleading that the suit property originally belongs to her grand father, who purchased the same in 1980, and on his demise, the property devolved upon herself and her father and they were in joint possession and enjoyment. It is her further plea that her father died in July 2008, hence, executing the sale deed on 26.08.2008 by her father, does not arise and further, her father used to sign in English only and therefore, his signing the alleged sale deed in Telugu also does not arise.

It may be noted here that the defendants are not the immediate family members, though may be related to the petitioner distantly. In terms of Section 3 of the Transfer of Property Act, where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part thereof, or share or interest in such property shall be deemed to have notice of such instrument as from the date of registration. Original plea of the

petitioner is that the sale deed alleged to have been executed by her father is a rank forgery, whereas, in the present amendment petition, an entire new plea is sought to be introduced to the effect that the petitioner, being a coparcener, is entitled to a share and in that view of the matter, the sale affected by her father is required to be set aside. If amendment is ordered as prayed for, as rightly observed by the learned Junior Civil Judge, it would cause prejudice to the respondents and further, it becomes an inconsistent plea.

It is well –settled that the amendment of the plaint cannot be ordered after commencement of trial. In this context, it may also be noted that initially, the judgment and decree rendered in the suit was set aside by the appellate court on the ground that no order was passed on the amendment petition and thereby, the matter was remanded. After remand, the amendment petition was taken up and the order under revision was passed.

It is not in dispute, at this stage, the trial has commenced and recording of evidence is complete. In the light of the amendment carried out to the Code of Civil Procedure and in the light of the settled legal position that no amendment can be ordered after commencement of trial, the present Revision does not deserve any consideration.

Learned counsel for the petitioner places reliance on **Baldev Singh v. Manohar Singh**¹, wherein it has been clearly held that inconsistent defences can be raised in the written statement although the same may not be permissible in case of the plaint.

¹ (2006) 6 Supreme Court Cases 498

The said decision has no application in this case for, the petitioner seeks to amend the plaint not the written statement and the plaintiff is required to come with a definite and positive case.

For all the above reasons, both the Civil Revision Petitions are dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

20th July 2018

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