

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.4033 of 2014

ORDER:

The revision petitioner is the sole plaintiff in O.S.No.97 of 2013 on the file of the learned XVI Additional District & Sessions Judge, Nandigama, Krishna District and the revision respondents are the defendants, of whom defendant No.10 is the Sub-Registrar, Nandigama and remaining are the unofficial defendants, and among them defendant No.1 died pending the suit.

2. The suit filed by the sole plaintiff against the defendants is for declaration of the plaintiff is the absolute owner of the plaint 'A' schedule property and also for cancellation of the Sale Deeds executed by defendant No.1 in respect thereof with further relief of permanent injunction against the defendants from interfering with possession and enjoyment of the plaint 'A' schedule property and with further alternative prayer of declaration that defendant No.1 has only right of enjoyment of plaint 'B' schedule property in her lifetime without any salable right after her by holding the Sale Deed No.560/ 2003 executed by defendant No.2 in favour of defendants 3 and 4, Sale Deed No.1541/ 2004 executed by the defendants 3 and 4 in favour of defendant No.5, Sale Deed No.2306/ 2004 executed by defendant No.1 in favour of the

defendants 6 & 7, Sale Deed No.2307/2004 executed by defendant No.1 in favour of defendant No.8, and Sale Deed No.2624/2004 executed by defendant No.1 in favour of defendant No.9 are void and no way binds on the plaintiff, and for consequential permanent injunction for plaint 'B' schedule property during lifetime of defendant No.1.

3. After filing of the suit, the plaintiff sought for amendment of the plaint and only defendant No.5 filed counter in opposing the same. The amendment sought is to include in the plaint at paragraph No.12 for recovery of possession of 'A' schedule property showing the defendants 1, 6 & 7 obtained temporary injunction against the plaintiff, which made her to seek the relief, and also to amend the paragraph No.14 about the recovery of possession of plaint 'A' schedule property, and also amend the relief-A and relief-B in valuation paragraphs in this regard including on Court fees at paragraph No.16, and to amend the prayer portion at paragraph No.17(a) in continuation of the declaratory relief of the plaint 'A' schedule property with recovery of possession also.

4. The averments in support of the amendment petition are that defendant No.1 is his mother and defendant No.2 is his elder brother and by Settlement Deed dated 21.07.1977 the

plaint 'B' schedule property of Ac.2.81 cents was settled in favour of the plaintiff and defendants 1 and 2 by giving life interest to defendant No.1, and after her demise the entire property should devolve upon the plaintiff and defendant No.2 equally with absolute rights, but defendant No.1 relinquished her right of enjoyment over the plaint 'B' schedule property having received Rs.20,000/- from plaintiff and defendant No.2 on 06.07.2000 and executed the notarized Relinquishment Deed. Later, the plaintiff and defendant No.2 partitioned the plaint 'B' schedule property and each got Ac.1.40 ½ cents and the property fell to the share of plaintiff is described as plaint 'A' schedule property, and the property fell to the share of defendant No.2 of Ac.1.00 cents was sold by him to defendants 3 and 4 on 04.04.2003. The plaintiff also entered into an Agreement of Sale dated 16.04.2003 with one P.Malkondaiah Chowdary for plaint 'A' schedule property. It is averred that from the date of relinquishment defendant No.1 did not have any title, interest or possession over the suit 'B' schedule property and even prior to that the plaintiff and defendant No.2 were cultivating the same. During pendency of the suit, defendant No.1 died on 24.07.2007 leaving the plaintiff and defendant No.2 as class 1 legal heirs being sons and in view of her death, he filed the petition for seeking amendment.

5. The counter filed by respondent No.5 Samudrala Suresh Babu, S/o. Subba Rao is with contention of the plaintiff also sold away his share of property i.e., plaint 'A' schedule property to P.Malkondaiah Chowdary and thereby, he is not entitled to file the petition, and if at all any documents executed by defendant No.1 in respect of the plaint 'A' schedule property, it is for him to protect his rights against those if at all interfere, but cannot effect the third-party rights like that of defendant No.5, who purchased the property from the defendants 3 and 4. The plaintiff cannot take the plea of hot and cold and seek amendment of his choice in the pleading for death of defendant No.1 no way gives any further cause of action.

6. The trial Court therefrom observed that though it is permissible under law to take alternative pleas, as the plea is inconsistent it cannot be permitted and the amendment petition is misconceived.

7. The grounds urged in the Civil Revision Petition are that the dismissal of amendment petition by the lower Court is contrary to law and unsustainable and from reappreciation of the scope of law and facts it should have seen that there is no inconsistent plea, but for alternative even in the plaint pleading the amendment is only to the limited extent and

thereby, the dismissal of application is erroneous; whereas it is the submission of counsel for the contesting respondents-defendants that the order of lower Court no way requires interference by this Court.

8. Heard both sides and perused the material on record.

9. There is nothing to show that the trial is already commenced. It is a settled law that from any subsequent event the amendment can be sought with due diligence, though otherwise the Court can mould from bringing on record the subsequent events after filing of the suit in moulding the relief. Leave about there is any relinquishment by defendant No.1 in her lifetime in favour of her two sons, the plaintiff and defendant No.2, otherwise they are entitled subject to any alienation in her lifetime, if at all whether she got then to decide any life interest or absolute rights. Once such is the case, when the amendment no way causes prejudice nor changes the nature of suit and not at all even inconsistent to the earlier pleading and otherwise necessitate including from the subsequent events and even from amendment seeking to the prayer of possession no way alters the nature of suit or the scope of lease.

10. Having regard to the above, the dismissal of application in I.A.No.218 of 2014 by the lower Court is unsustainable and

consequently, said I.A.No.218 of 2014 is allowed subject to costs of Rs.3,000/- (Rupees three thousand only) payable by the plaintiff to the contesting defendants before the lower Court, within one (1) week from the date of receipt of a copy of this order, for the lower Court to permit the amendment. Even the plaintiff failed to pay the amount as directed supra to the contesting defendants, represented through advocate, within the time fixed, the plaintiff shall deposit the said amount before the Superintendent of the lower Court by virtue of this order to send the amount to any orphanage owned by the Government. It is needless to say that the plaintiff is entitled to consequential amendment pursuant to it and the defendants are entitled to file additional written statement pursuant to the amendment.

Accordingly and in the result, this Civil Revision Petition is allowed. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

20.02.2018
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