

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

CIVIL REVISION PETITION No. 4701 of 2018

Between:

Putchala Ram Reddy

... Petitioner

and

Putchala Srinivas Reddy & others

...Respondents

Date of Judgment Pronounced: 20.12.2018

Submitted for Approval:
The Hon'ble Sri Justice CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers may be allowed to see the judgments ?	No
2. Whether the copies of judgment may be marked to Law Reporters/Journals	yes
3. Whether His Lordship wish to see the fair copy of the Judgment ?	No

(CHALLA KODANDA RAM, J)

* The Hon'ble Sri Justice CHALLA KODANDA RAM
CIVIL REVISION PETITION No. 4701 OF 2018

% Dated 20.12.2018

Between:

Putchala Ram Reddy

... Petitioner

and

Putchala Srinivas Reddy

...Respondents

! Counsel for the petitioners : Sri J. Suresh Babu

^ Counsel for the respondents : Sri Poodatlu Amarender

<GIST:

>HEAD NOTE:

? Cases cited:

2014(6) ALD 258

2018 (1) HLT 218(SC) = (2018) 2 SCC 132

2009(2) SCC 409



HON'BLE SRI JUSTICE CHALLA KODANDA RAM
CIVIL REVISION PETITION No.4701 OF 2018

ORDER:

This Civil Revision Petition is filed, under Article 227 of the Constitution of India, by the petitioner/plaintiff, aggrieved by the order, dated 13.07.2018 dismissing I.A.No.241 of 2018 taken out under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure in O.S. No.103 of 2012 on the file of the Court of the Senior Civil Judge at Wanaparthy.

2. Heard the learned counsel for the petitioner/plaintiff and the learned counsel for the respondents/defendants.

3. Petitioner filed the suit seeking partition of the suit schedule properties. I.A.No.241 of 2018 was filed therein to amend the plaint on the ground that due to inadvertence and on account of ignorance, the petitioner failed to mention two properties in Survey Nos.299 and 300 over an extent of Ac.0-77 Cents and Ac.1-03 cents respectively, which ought to have been included as ancestral property and also in the suit schedule property. By the impugned order, the said IA came to be dismissed holding that the suit is of 2012 and that there were no valid reasons justifying amendment of the plaint at the belated stage, that too when the suit is at the stage where the affidavit-in-chief of PW1 has already been filed and the matter is coming up for his cross-examination.

4. Sri J. Suresh Babu, learned counsel for the petitioner, submits that his client is an illiterate eking out his livelihood as a

coolie and is residing in Mumbai. Since the suit is filed for partition, the properties, which were sought to be included by way of amendment, are also required to be partitioned among defendants 1 to 3/respondents 1 to 3 herein. He further submits that non-mentioning of the said properties was only on account of the ignorance and not having regular interaction with his advocate. The learned counsel, placing reliance on the judgment of this Court in *A.Krishna Rao v. A.Narahari Rao*¹ and that of the Supreme Court in *Mohinder Kumar Mehra vs Roop Rani Mehra*² particularly, drawing the attention of this court to paragraphs 19 to 21, prays for setting aside the order and allowing the CRP. The learned counsel also would plead that no prejudice would be caused to the respondents/defendants and further the amendment would help in resolving the actual controversy.

5. Learned counsel for respondent Nos.1 to 4, placing reliance on the judgment of the Supreme Court reported in *Vidyabai & ors. v. Padmalatha & Anr.*³, asserts that there is no justifiable reason as required under Order VI Rule 17 CPC for allowing the amendment of the plaint at the belated stage, particularly when the matter is coming up for cross-examination of the witnesses. Drawing attention to the judgment of the Supreme Court, he would submit that filing of an affidavit in lieu of examination in chief of the witness would amount to commencement of

¹ 2014(6) ALD 258

² 2018 (1) HLT 218 (SC) = (2018) 2 SCC 132

³ 2009(2) SCC 409

proceedings. He would further submit that the petitioner was not residing in the village and as a matter of fact, the partition among the parties has already been taken place and the IA is filed only to drag the proceedings. He would pray for dismissal of the CRP by supporting the orders of the court below.

6. This court, while ordering notice, permitted the learned counsel for the petitioner also to take out notice on the respondents. Notices have already been served on respondents 1 to 4. Notice sent to respondent No.5 returned unserved with an endorsement 'insufficient address'. As the 1st respondent is represented by a counsel and considering the fact that respondent No.5 is only a purchaser against whom no particular relief has been claimed, this Court is of the opinion that the CRP can be disposed of.

7. In *Mohinder Kumar Mehra's* case (2 supra) cited supra, adverting to the provisions of Order VI Rule 17 CPC, the Supreme Court, making a reference to the earlier judgments in *MAHILA RAMKALI DEVI v. NANDRAM (DEAD)* [2015(13) SCC 132], opined that the rules of procedure are intended to be a handmaid to the administration of justice and a party cannot be refused just relief merely because of some mistake, negligence or inadvertence or even infraction of rules of procedure.

19. While considering the prayer of amendment of the pleadings by a party, this Court in the case of *Mahila Ramkali Devi & Ors. Vs. Nandram (Dead) through Legal Representatives & Ors.*, (2015) 13 SCC 132 has again reiterated the basic principles, which are to be kept in

mind while considering such applications in Paragraphs 20, 21 and 22, which is quoted as below:-

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

21. In our view, since the appellant sought amendment in Para 3 of the original plaint, the High Court ought not to have rejected the application.

22. [In Jai Jai Ram Manohar Lal v. National Building Material Supply](#)³, this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.”

8. Even in the judgment cited by the learned counsel for respondent Nos.1 to 4, while holding that filing of an affidavit in lieu of chief examination of a witness would amount to commencement of the proceedings, did not rule out amending the prayer for justifiable reasons. What all the Court is required to be specified is that the party seeking amendment had shown justifiable reasons and the Court is satisfied with such reasons stated for not pleading the amendments, which they seek to introduce by way of amendment petition. It was also further held therein in paragraph 14 as under:

“14. It is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such condition is fulfilled, the amendment is to be allowed.”

10. Applying the said principle to the present set of facts, the petitioner pleaded that he being an illiterate, residing in

Hyderabad and Mumbai for ekeing out livelihood and by inadvertence and oversight the factum of two properties, having been purchased by his father, was not mentioned and as the suit is seeking partition of the ancestral properties, it would be in the interest of justice that even such properties are required to form part the partition suit. There is no reason for disbelieving the plea, particularly, when the respondents have not disputed the fact of the petitioner residing in Hyderabad and Mumbai for ekeing out his livelihood.

10. Further, one should not loose site of the fact that the suit is filed seeking for partition of the ancestral property in which event, the ancestral property is required to be the subject matter of the partition and what all the petitioner is seeking is to add two paragraphs without even change in the prayer. There may be any number of properties to be divided, so far as the adjudication is concerned, it would not make much of a difference. The contention of the counsel for respondents No.1 to 4, to the effect that on the earlier occasion, the partition was already affected, is a matter which is required to be considered during trial. In those circumstances, the Court below ought to have taken a liberal view in allowing the amendment petition, but however, on terms.

11. Ends of justice would therefore, be met by setting aside the order under Revision, however, on the petitioner paying Rs.10,000/- in favour of the respondents.

Accordingly, the Civil Revision Petition is allowed and the order dated 13.06.2018 in I.A.No.241 of 2018 in O.S.No.103 of 2012 is set aside on condition of the petitioner paying Rs.10,000/- (Rupees ten thousand only) to the respondents within two weeks from the date of receipt of a copy of this order before the Court below. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

December 20, 2018

LMV

