THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION Nos.5142, 5158 and 5221 of 2018

COMMON ORDER:

In these three civil revision petitions filed under Article 227 of the Constitution of India, challenge is to the Common Order dated 03.08.2018 passed by the Senior Civil Judge, Atmakur (for short, 'the trial Court') in three interlocutory applications i.e., I.A.No.260 of 2018 filed for reopening the suit O.S.No.110 of 2014 for further proceedings, I.A.No.261 of 2018 for amendment of plaint and, I.A.No.262 of 2018 for impleading respondents 4 to 8 herein as defendants 4 to 8 in the suit. In view of the commonality of averments in the affidavits and counter-affidavits, so also the causes of action, the trial Court has concurrently dealt with all the three Applications and, by the impugned Common Order, dismissed the same. CRP No.5142 of 2018 is filed challenging the dismissal of I.A.No.260 of 2018, CRP No.5158 of 2018 challenges the dismissal of I.A.No.261 of 2018 and, CRP No.5221 of 2018 challenges the dismissal of I.A.No.262 of 2018.

Since these Revisions arise out of the common order passed in the Interlocutory Applications of the same suit, they are taken up for disposal together.

2. The undisputed and admitted facts relevant for disposal of these revision petitions are as under:

The petitioners/plaintiffs filed O.S.No.110 of 2014 against the respondents/defendants for declaration of title and possession of plaint schedule properties. The trial in the suit was completed, and it was posted for arguments to 24.04.2018 initially. After reopening of the Court on 10.07.2018 after summer recess, the petitioners filed the aforestated

Interlocutory Applications. The respondents filed their counter affidavits opposing the reliefs claimed therein.

3. It is the case of the petitioners that O.S.No.80 of 2002 was filed by respondents 2 and 3 herein against respondent No.1 herein and one Rajula Reddy, and obtained *ex parte* decree and took possession of the suit schedule lands. The plea now taken by the petitioners is that they were minors at the time of filing of O.S.No.80 of 2002 and that respondent No.1 herein is their mother and taking advantage of her innocence, she was confined in a room and was not permitted to contest O.S.No.80 of 2002, and that the said Rajula Reddy did not appear in O.S.No.80 of 2002 thereby prevented his younger minor brothers and younger sister to appear in the suit. It is the further case of the petitioners that they came to know that the respondents/defendants sold Ac.1-94 cents in Survey No.484 to one Kagula Venkata Ramana (proposed defendant No.8) on 22.01.2005 by way of registered sale deed and they were not aware of the sale, hence, it is necessary to add defendants 4 to 8 as parties to the suit.

4. The Court below, after consideration of the affidavits and counter affidavits, and after hearing the counsel of both the sides, had recorded a finding that the plea of fraud and that the petitioners were minors at the time of filing of O.S.No.80 of 2002 by Respondents 2 and 3, were already taken by the petitioners in the plaint and there is nothing new in the pleas that are sought to be taken by way of amendment petition. The Court below further observed that the plea of the petitioners that they came to know the factum of sale of item No.4 of the petition schedule property to defendant No.8 only during cross examination, is an incorrect statement, as petitioner No.1, while deposing, in his cross examination as PW.2, had stated that the property is presently in possession of Kagula Venkata Ramana (defendant

No.8) as it was sold to him by respondent No.3/defendant No.3 after he got injunction order in his favour. Therefore, the Court below observed that the petitioners were aware of the sale transaction of item No.4 in favour of defendant No.8 even prior to date of deposition as PW.2 i.e., 07.04.2017.

5. Heard the learned counsel Sri J. Janakirami Reddy appearing for the petitioners; and the learned counsel Sri K. Ramesh Kumar appearing for the respondents.

6. The point that arises for consideration is whether the order under challenge suffers from legal infirmity or irregularity warranting interference of this Court under Article 227 of the Constitution of India.

7. In this context, the reasons recorded by the Court below while dismissing I.A.No.261 of 2018 filed to amend the plaint, are required to be examined keeping in view the well-settled principles laid down by the Supreme Court while adjudicating challenge to interlocutory orders, in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

8. It would be pertinent to note that if the dismissal of amendment petition in I.A.No.261 of 2018 is not justified under law, the same would be liable to be set aside; thereby the prayers in the other two interlocutory applications viz., I.A.No.260 of 2018 and I.A.No.262 of 2018 would be required to be allowed.

9. The principles relating to consideration of applications made under Order VI Rule 17 CPC are well settled. The Hon'ble Supreme Court in a catena of decisions, considering the amendment brought to Order VI Rule 17 particularly the Proviso thereto, had held that no amendment shall be

allowed after trial has commenced, unless the Court comes to a conclusion that in spite of due diligence, the party could not have filed the application before commencement of trial.

10. In the present case on hand, the Court below had recorded a categorical finding that the specific aspects which the petitioners seek to add to the plaint by way of amendment petition were already pleaded in the plaint and the contention of the petitioners that, at the time of filing of suit, they were not aware of the facts which they would like to add now, was found to be a false statement. The Court below further observed that though the petitioners pleaded that they were minors at the time of filing of O.S.No.80 of 2002, which was decreed on 13.09.2002, no explanation was forthcoming with regard to the steps taken by them immediately on their becoming majors.

11. In this context, it may be noted that by the date of filing of the present suit i.e., O.S.No.110 of 2014, the 1st petitioner was aged 24 years and the 2nd petitioner was aged 23. O.S.No.80 of 2002 was decreed on 13.09.2002. In normal circumstances, the petitioners ought to have challenged the proceedings in O.S.No.80 of 2002 within one year of their becoming majors, which they have not done. Further, the trial Court also found that except mentioning the word “fraud” with respect to the Judgment and Decree in O.S.No.80 of 2002, nothing new was stated in the Application filed for amendment of plaint. Likewise, with respect to addition of proposed defendants, the trial Court observed that in respect of sale of item No.4 of the petition schedule property to proposed defendant No.8 by a registered sale deed dated 22.01.2005, the petitioners were aware of the sale at least by 07.04.2017 as it was elicited in the cross examination of petitioner No.1 (as PW.2) with respect to knowledge of sale.

12. It may be noticed that I.A.No.261 of 2018 came to be filed at a belated stage i.e., on 10.07.2018, i.e., after about 15 months of knowledge even by constructive notice, and the suit is at the stage of arguments. Taking all these aspects into consideration, the finding recorded by the trial Court that though the petitioners had sought amendment of plaint, they have not chosen to seek any new relief to declare the sale dated 22.01.2005 in favour of defendant No.8 as null and void and that it is not binding on the petitioners. Therefore, the Court below had come to the conclusion that the Application made seeking amendment of plaint is filed at a belated stage and the reasons stated for such a belated Application are not convincing and the petitioners have failed to explain that the pleas and amendments which they now seek to introduce by way of amendment application I.A.No.261 of 2018, could not have been taken by them earlier in spite of due diligence. In other words, the Court below was not satisfied with regard to the aspect of 'due diligence' as is required under Order VI Rule 17 CPC.

13. Once this Court has come to the conclusion that the amendment petition I.A.No.261 of 2018 has no merit, the question of adding proposed defendants 4 to 8 by ordering I.A.No.262 of 2018 and reopening the suit also does not arise, both for the reasons that the petitioners were unable to explain that they could not seek the reliefs prayed therein in spite of due diligence, and further the petitioners had chosen not to seek addition of the proposed defendants 4 to 8 in spite of the plea taken by the respondents/defendants in their written statement to the effect that the suit is liable to be dismissed for non-joinder of parties. It may be borne in mind that the order impugned does not satisfy any of the parameters warranting interference of this Court under Article 227 of the Constitution. This Court hence, does not find any reason to differ with the findings recorded in the

well-considered order dated 03.08.2018 passed by the learned Senior Civil Judge in I.A.Nos.260, 261 and 262 of 2018.

14. Accordingly, the civil revision petitions are dismissed. No order as to costs. Pending miscellaneous petitions, if any, shall also stand dismissed.

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JUSTI CE CHALLA KODANDA RAM

18th December, 2018

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THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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CIVIL REVISION PETITION Nos.5142, 5158 and 5221 of 2018

18th December, 2018

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