

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.4928 of 2017

ORDER:

The challenge in this Civil Revision Petition at the instance of plaintiffs, is the order dated 09.08.2017 in I.A.No.1005 of 2015 in O.S.No.522 of 2009 passed by learned Senior Civil Judge, Wanaparthy dismissing the petition filed by the petitioners/plaintiff under Order VI Rule 17 CPC for amendment of plaint.

2) Originally, petitioners/plaintiffs filed the suit for partition and allotment of 1/7th share in plaint 'A' schedule and 1/8th in plaint 'B' schedule properties; thereafter they filed I.A.No.1005 of 2015 for amendment of the pleadings stating that 'B' schedule property is the exclusive property of their grand mother—Smt. Shankamma and she leased out the same to one Chandra Reddy—defendant No.23 under a registered lease deed for a period of five years; thereafter Shankamma died and lease is continued; then they asked defendant No.23 to vacate the said house but he postponed the same on pretext or the other and finally he filed a suit for injunction not to evict; at that time they came to know that his wife by name C.Nirmala—defendant No.16 purchased 'B' schedule property from defendant Nos.1 to 15 of their undivided respective shares under three registered sale deeds; as the purchasers are strangers to the family of plaintiffs and they have no concern to claim or to purchase any undivided right of interest in plaint 'B' schedule property and it is against the provisions of Partition Act, their sale deeds are illegal and void and

they do not confer any right to the purchasers and those sale deeds are not binding on them; as they are sharers claiming under partition suit, they are having every right of preemption to purchase the said house as per the Partition Act.

3) Opposing the same, defendants 16 and 23 filed written statement contending that V.Narayana Reddy—the grand father of plaintiffs who was a practicing advocate, purchased the plaint ‘B’ schedule property with his own money; the said Narayana Reddy is having two children through his first wife—Ramulamma and seven children through his second wife—Shankaramma. Therefore, plaint ‘B’ schedule property should be divided into nine shares and defendant No.16 had purchased all the 8 shares except 1/9th share of petitioners. Thus, they prayed to dismiss the petition.

4) The trial Court dismissed the said petition observing that petitioners filed the petition at the stage of arguments and if such amendment is allowed the nature of suit will be effected.

Hence, the instant CRP.

5) Heard arguments of Sri Chandraiah Sunkara, learned counsel for petitioners and Sri J.Suresh Babu, learned counsel for respondent Nos.16 and 23. Respondents 1 to 15 and 17 to 22 are not necessary parties vide cause title.

6) The point for determination is:

“Whether there are merits in this CRP to allow?”

7) **POINT**: The trial Court dismissed the amendment petition filed by the plaintiffs mainly on the ground that the said petition was filed at a belated stage when the suit was coming for arguments.

8) Order VI Rule 17 CPC governs amendment of the pleadings and it reads thus:

“17. Amendment of pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

This rule in terms states that the Court in its discretion may at any stage of proceedings allow any party to alter or amend his pleadings on such terms as may be just and all such amendments shall be allowed which may be necessary for the purpose of determining the real question in controversy between the parties. This general rule is, however, subject to a proviso stating that no such application for amendment shall be allowed after trial has commenced, unless party seeking such amendment could convince the Court that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

9) In ***Chander Kanta Bansal v. Rajinder Singh Anand***¹ the Apex Court happened to consider the provision under Order VI Rule 17 CPC in

¹ AIR 2008 SC 2234

the context when a party can be permitted to amend his pleadings. Expatiating on the terms ‘due diligence’ employed in the proviso the Apex Court observed thus:

“.....The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial. As mentioned earlier, in the case on hand, the application itself came to be filed only after 18 years and till the death of her first son Sunit Gupta, Chartered Accountant, had not taken any step about the so-called agreement. Even after his death in the year 1998, the petition was filed only in 2004. The explanation offered by the defendant cannot be accepted since she did not mention anything when she was examined as witness.”

10) Therefore, the petitioners’ case has to be viewed in the context whether in spite of their due diligence i.e. applying care, caution, attention, could not seek for amendment before the commencement of trial. To verify the *bona fides* of the petitioners, it is incumbent on us to verify the nature of the amendment now sought by the plaintiffs. Plaintiffs

filed the suit seeking partition of plaint 'A' schedule land property and plaint 'B' schedule house property claiming $1/8^{\text{th}}$ share and $1/7^{\text{th}}$ share respectively. Plaintiffs are the daughter and grand children of late V.Narayana Reddy born through his second wife—Shankamma. Some of the defendants are children of Narayana Reddy born through his first wife—Ramulamma and some of the defendants are children and grand children born through his second wife—Shankamma.

11) Be that as it may, plaintiffs put-forth a lengthy amendment, the substance of which is that 'B' schedule house property is the Stridhana property of late Shankamma and therefore, her children i.e. plaintiffs and defendants 8 to 15 alone are having right therein but defendants 1 to 7 who are the grand children of Narayana Reddy born through his first wife—Ramulamma have no right therein. However, the plaintiffs came to know that defendants 1 to 15 sold their alleged shares in the 'B' schedule property to defendant No.16 which is against the provisions of Partition Act. Plaintiffs' case is that they have $1/7^{\text{th}}$ share in the 'B' schedule property and they have right of preemption to purchase the remaining $6/7^{\text{th}}$ share in the 'B' schedule property and the third parties like defendant No.16 have not right to purchase the same and other defendants have no right to sell the same. Precisely, the above amendment is sought to be added in the plaint but the said amendment was not put-forth till the matter came up for arguments. As already stated, the trial Court dismissed the petition on the ground of enormous delay. Now, applying the diligence test, it is interesting to note, in the original plaint, plaintiffs have not even clearly stated that 'B' schedule property is the Stridhana property of

Shankaramma. What all stated in para-3 was to the effect that the house property shown in 'B' schedule was leased to defendant No.16's husband by Smt. Shankaramma in the year 2001 for a period of 5 years through a registered lease deed and Shankaramma died in the same year and after the death of Shankaramma lease continued. So, there was no specific plea in the plaint that 'B' schedule property belonged to Shankaramma. Now, the plaintiffs proposed to put-forth the pleadings by way of amendment to the effect that 'B' schedule house property belonged to Shankaramma and plaintiffs have 1/7th share therein and they have right of preemption to purchase the remaining 6/7th share. The plaintiffs have not stated cogent reason for not putting forth the aforesaid pleas in the original plaint.

12) In my view, the amendment sought for introduces a new case altogether. Therefore, the plaintiffs miserably failed to establish their *bona fides* apart from failing to show their lack of application of due diligence. The trial Court rightly dismissed the petition. I see no reason to interfere with the same.

13) The Civil Revision Petition is accordingly dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 29.01.2018

Note: Issue C.C by tomorrow.

(b/o)
Murthy