

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRP No.5718 of 2012

ORDER:

This Civil Revision Petition is filed questioning the order dated 29.10.2012 passed in IA No.836 of 2012 in OS No.1335 of 2008 by the IV Senior Civil Judge, City Civil Court, Hyderabad.

The suit OS No.1335 of 2008 was filed for a specific performance directing the defendants to execute a registered sale deed in favour of the plaintiff in respect of the suit schedule property as per the agreement of sale. Initially, the suit was filed against the first defendant. Later, the second defendant was added by an order dated 10.07.2009 and the trial was commenced. Thereafter, when the trial was in progress, another application in IA No.836 of 2012 was filed seeking further amendment of the plaint. In this application, the prayers were sought to be amended and further allegations were made against the second defendant stating that he is not a bona fide purchaser and that he is bound to join in the execution of the sale deed. The prayer portion was also sought to be amended, apart from adding in the court fee portion. This application was strongly opposed by the respondents. Despite the strong opposition, the

application was allowed and the Court directed the amendments to be carried out. Questioning the same, the present revision is filed.

This Court has heard Sri Ali Farooq, learned counsel for the revision petitioner/second defendant and Sri P. Panduranga Rao and Sri A. Ravi Kumar, learned counsels for the respondents 1 and 2 respectively.

The contention of the learned counsel for the revision petitioner is that a post-trial amendment should not have been allowed by the lower Court unless the conditions specified under the amended Order VI Rule 17 CPC were fully complied with. He points out that the case was posted for the cross-examination of DW.2 and at that stage, the present application was filed. The trial of the suit had begun a long ago. He also points out that the property was sold long prior to the filing of the application and the first defendant pleaded in her written statement itself that she has sold the property to the second defendant-Mohd. Khairullaiah for a consideration of Rs.16 lakhs under the registered document bearing No.2467 of 2008. The second defendant also filed a written statement and was contesting the suit.

The learned counsel for the revision petitioner also points out that the reliance of the lower Court on **Kovvuri**

Ramakrishna Reddy v. Padala Satyanarayana Reddy¹ is not correct. He points out that in the affidavit that is filed seeking amendment, the only ground that is made out is that the necessary pleadings against the second defendant were not incorporated and that the same was discovered during the course of cross-examination of the second defendant. For these reasons, the learned counsel argues that the application should not have been allowed at all. In addition, he submits the following case law:

- i) **Bheemreddy Yella Reddy v. Bheemreddy Narasimha Reddy**²;
- ii) **Narne Estates (P) Ltd., Secunderabad v. N. Gopal Naidu**³; and
- iii) **Revajeetu Builders and Developers v. Narayanaswamy and sons**⁴.

Basing on the above case law, the learned counsel for the revision petitioner argues that the lower Court committed a fundamental error in allowing the application. He particularly draws the attention of this Court to the conclusions of the Hon'ble Supreme Court in paras-63 & 64 of **Revajeetu Builders and Developers's** case (4 supra) and states that amendment should not be allowed.

¹ 2012 (5) ALD 56

² 2016 (1) ALD 80

³ 2011 (5) ALD 445

⁴ (2009) 10 SCC 84

In reply thereto, the learned counsel for the respondent/plaintiff supported the application and said that already the second defendant is added as party to the suit. The proposed amendment that is sought to be added is only clarificatory in nature and that the addition of new paragraphs/prayers in the plaint will not fundamentally alter the nature of the suit. The second defendant as a subsequent purchaser was already a party as per the learned counsel. Therefore, through this amendment, clarifications are introduced and according to the learned counsel, these three amendments are necessary for proper and effective adjudication of the case. He states that the prayer directing 2nd defendant to join in the execution of the sale deed is necessary for a complete adjudication. He also submits that the amendment would not prejudice to others and therefore, the application for amendment was rightly allowed by the lower Court.

Now, the point that arises for consideration is whether the application was correctly allowed by the lower Court or not?

The facts which are borne out by the record are that initially the suit was filed for specific performance against the first defendant alone. On coming to realize that the

first defendant sold the property to the second defendant, the plaint was amended bringing on record the second defendant. At that stage i.e., in July 2009, no further amendments were sought. Three years thereafter and after the commencement of the trial, the present application was filed to add a prayer that the second defendant should join the first defendant in the execution of the sale deed and in delivering the vacant possession of the suit schedule property. In addition, it is also sought to be pleaded that sale deed document No.1882 of 2008 by the first defendant in favour of the second defendant is not binding on the plaintiff and void.

As far as reliance on the case of **Kovvuri Ramakrishna Reddy's** case (1 supra) is concerned, this Court is of the opinion that the same is not applicable in the facts and circumstances of the case. The affidavit in this case does not state that relying on the counsel's advice, they did not seek an amendment in July 2009. There is virtually no averment in the present application about the wrong advise by counsel at all for this Court to support the finding of the lower Court on the basis of **Kovvuri Ramakrishna Reddy** (1 supra).

As per the amended CPC and the settled law on this subject including **Salem Advocate Bar Association, Tamil**

Nadu v. Union of India⁵, an application for amendment can be made after the commencement of the trial if it is shown that despite due diligence, such amendment could not have been sought earlier. In the case on hand, the affidavit is absolutely silent about the due diligence etc. There are no new facts which were discovered recently, because the sale deed executed by the first defendant in favour of the second defendant is mentioned in the written statement of first defendant itself. Thereafter, an application was filed and the second defendant was added. Nothing more was done and no further pleas were raised nor were any new reliefs sought. Therefore, the question of due diligence etc., does not arise in this case.

In **Revajeetu Builders and Developers's** case (4 supra) the Hon'ble Supreme Court summarized the case law on the subject for amendment of the pleadings and in paras-63 & 64, the Hon'ble Supreme Court laid down some basic principles that should be taken into consideration while allowing or rejecting the application for amendment. The same are reproduced hereunder:

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

⁵ AIR 2005 SC 3353

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is *bona fide* or *mala fide*?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.

In the said judgment, the Hon'ble Supreme Court clearly held that the decision on an application under

Order 6 Rule 17 CPC is a serious judicial exercise and it should not be undertaken in a casual manner.

Against this backdrop of the test laid down by the Hon'ble Supreme Court, if the facts in this case are considered the following position would emerge.

- a) The amendment sought is neither imperative nor necessary for a proper and effective adjudication of the case. As per the settled law on the subject reported in ***Durga Prasad v. Deep Chand***⁶ and other cases like ***R.C. Chandiok v. Chuni Lal Sabharwal***⁷, the trial Court has power to direct the second defendant/ subsequent purchaser to join in execution of the sale deed, if it feels that the case of the plaintiff is made out and specific performance is to be ordered.
- b) The application is not made bona fide and there is long delay.
- c) The amendment will cause prejudice to the other side as it is filed long after the trial has commenced.
- d) Refusing an amendment in this case will not lead to injustice or multiple litigation, as in the

⁶ AIR 1954 SC 75

⁷ (1970) 3 SCC 140

opinion of this Court a power is vested in the original Court to pass an appropriate decree by directing the second defendant to join in the execution of the sale deed if the Court holds that the agreement of sale is proved and specific performance can be ordered.

- e) The proposed amendment alters the nature of the suit.
- f) The amendments sought about the 'void nature' of the execution of the sale deed would *prima facie* be barred by time in the opinion of this Court in the facts of this case.

In view of the above, this Court is of the opinion that the lower Court wrongly allowed the application and committed an error which has to be corrected.

Accordingly, the Civil Revision Petition is allowed. The impugned order dated 29.10.2012 in IA No.836 of 2012 in OS No.1335 of 2008 by the IV Senior Civil Judge, City Civil Court, Hyderabad is set aside.

The lower Court is directed to proceed with the trial of the case without in any way being influenced by what is mentioned in this order. As the suit is of the year 2012, the lower Court is directed to proceed with the trial on a priority basis. Requests for adjournment should be

dealt with strictly but in accordance with law. Both parties are at liberty to raise all pleas/defences open to them, as this order is passed by considering facts for the purpose of this revision only.

In the circumstances of the case, there shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

Date: 08.11.2018
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D.V.S.S. SOMAYAJULU, J

