

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

CRP No.149 of 2014

ORDER:

This Civil Revision Petition is filed questioning the order dated 20.11.2013 in IA No.98 of 2013 in OS No.60 of 2008 passed by the V Additional District Judge at Kothagudem.

The application IA No.98 of 2013 is filed for amendment of the written statement. The same was allowed on the contest. Questioning the same, the present CRP is filed.

The facts that are not in dispute are that a) the application for amendment was filed long after the trial has commenced; b) the plaintiffs have examined a number of witnesses and their evidence was closed; and c) the defendants' evidence was also introduced and thereafter, this application was filed.

This Court has heard Sri K. Sai Rama Murthy, learned counsel for the revision petitioner/first plaintiff and Sri S. Madan Mohan Rao, learned counsel for the respondents/defendants.

It is the contention of the learned counsel for the appellant/first plaintiff that as the amendment is sought after the trial has commenced, the Court committed a mistake in allowing the application. He relied upon the

proviso of the amended Order 6 Rule 17 CPC, which says that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to a conclusion that in spite of due diligence the party could not raise the matter before the commencement of the trial. It is the contention of the learned counsel for the appellant relying upon ***Veerisetty Venkata Subba Rao v. Bogala Gangadhara Reddy***¹ that this application does not deserve to be allowed as it is filed after the trial has commenced and due diligence is not at all established.

In reply thereto, the learned counsel for the respondents/defendants supported the order of that was filed. He relied upon ***Polam Reddi Lakshmana Reddy v. Polam Reddi Veera Reddy***² and ***G. Madhusudhana Reddy v. G. Maruthi Seetha Rami Reddy***³ and argued that the said amendment is necessary for the purpose of a complete adjudication of the matter and to render justice. It is also the submission of the learned counsel that the amendment of written statement should be allowed more liberally compared to the amendment of the plaint.

This Court after hearing both the learned counsel notices that the affidavit filed in IA No.98 of 2013 is not at all in line with the provisions of amended Order 6 Rule

¹ 2017 (3) ALD 11

² 1996 (1) APLJ 7 (SN)

³ 2004 (1) An.W.R. 210 (A.P.)

17 CPC. As held by the Hon'ble Supreme Court of India ***Vidyabai v. Padmalatha***⁴ unless and until a foundation is laid in the affidavit that despite the exercise of due diligence the facts necessitating the amendment was not noticed, the amendment cannot be allowed.

In the case on hand, the affidavit is absolutely silent about the due diligence. It merely states that due to oversight, some pleadings were not incorporated. The very purpose of amended Order 6 Rule 17 CPC would be defeated if amendments are liberally allowed. In order to curtail a tendency to seek amendments liberally, the amendments were brought into the Civil Procedure Code. Post-trial amendments therefore can only be allowed, if the Court is convinced that despite due diligence, the matter could not be raised before the trial has commenced.

In the case on hand, as noticed by this Court, there is absolutely no statement or averment in the affidavit that despite due diligence, the matter could not be raised earlier. Even a perusal of the proposed amendment shows that it relates to the rights are conferred through an agreement of sale etc.

For all these reasons, this Court is of the opinion that the amendment should not have been allowed by the

⁴ (2009) 2 SCC 409

lower Court and that the lower Court committed an error in allowing the application. This Court absolutely concurs with the finding of the learned single Judge of this Court in **Veerisetty Venkata Subba Rao's** case (1 supra).

The Civil Revision Petition is accordingly allowed. The order dated 20.11.2013 in IA No.98 of 2013 in OS No.60 of 2008 passed by the V Additional District Judge at Kothagudem is set aside. 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: 13.12.2018
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D.V.S.S. SOMAYAJULU, J

