

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.7310 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the orders dated 07.11.2017 passed in I.A.No.951 of 2017 in O.S.No.433 of 2011 on the file of the Court of the Additional Senior Civil Judge, Kadapa.

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the present revision are briefly as follows:

The first respondent filed O.S.No.433 of 2011 on the file of the Court of the Additional Senior Civil Judge, Kadapa, against defendant Nos.1 to 8 seeking partition of the suit schedule property. Petitioner Nos.1 and 2 and respondent Nos.2 to 7 are defendants in the main suit. After completion of the plaintiff's side evidence, defendant Nos.1 and 2 have filed a petition under Order VI Rule 17 C.P.C. seeking amendment of written statement.

4. The first respondent-plaintiff filed a counter opposing the petition.

5. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

6. Learned counsel for the petitioners-defendant Nos.1 and 2 strenuously submitted that the trial Court ought to have allowed the amendment petition in view of typographical mistake in para No.6 of the written statement. She further submitted that the trial Court

dismissed the petition on erroneous grounds; hence, it is a fit case to allow the revision.

7. Learned counsel for the first respondent-plaintiff submitted that whatever pleaded by the petitioners was within their exclusive knowledge much prior to filing of the suit. He further submitted that the petitioners failed to prove the ingredients of proviso to Order VI Rule 17 C.P.C. He also submitted that the trial Court considered factual and legal aspects in right perspective and dismissed the petition; therefore, it is a fit case to dismiss the revision.

Now the point that arises for consideration in this Civil Revision Petition is 'whether there is any illegality or irregularity in the orders of the trial Court, which warrants interference of this Court by exercising jurisdiction under Article 227 of the Constitution of India'?

8. To substantiate the arguments, the learned counsel for the petitioners has drawn the attention of this Court to the decision in **P.Rajini v. P.Narasamma and others**¹. As per the principle enunciated in the case cited supra, an amendment of written statement can be allowed at any stage.

9. Learned counsel for the first respondent has drawn the attention of this Court to the following decisions:

J.Samuel and others v. Gattu Mahesh and others², wherein paragraph No.22 reads as follows:

“22. The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of

¹ 2016 (1) ALT 651

² (2012) 2 SCC 300

mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by the plaintiffs. All these aspects have been rightly considered and concluded by the trial Court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip.”

B.Sreenivasulu v. B.Kusuma Kumari and others³ wherein paragraph Nos.14 and 15 reads as follows:

“14. Here in our case, after eliciting facts in the cross-examination of plaintiff with reference to plea that was taken in the written statement in respect of extent of property, plaintiff came with the application of amendment contending that mistake was crept in his advocate’s office. This cannot be accepted unless it is shown with convincing material that mistake was really crept as alleged.

15. Considering these aspects and the fact that Trial Judge has not given any finding as to the compliance of proviso under Order VI Rule 17 of the Code to the case on hand in spite of observation by this Court while remitting the matter, I am of the view that the impugned order dated 11.4.2016 cannot be sustained and it is contrary to proviso of Order VI Rule 17 of the Code.”

10. As per the principle enunciated in the cases cited supra, typographical mistake is not a ground for allowing of the amendment of written statement.

11. Let me consider the facts of the case on hand in the light of the above legal principles.

12. In order to appreciate the contention of the learned counsel for the petitioners, it is not out of place to extract hereunder para No.6 of the written statement and the prayer in I.A.No.951 of 2017 in O.S.No.433 of 2011 seeking amendment of written statement:

³ 2016 (6) ALD 120

“6) As per the knowledge of this defendant, the suit schedule properties item No.1 and 2 were purchased by D-2 to D-6. But at the time of registration the D-1 signature obtained by D-7 and D-8 at the Sub-Registrar Office as one of the attesor. This defendants 1 to 3 and plaintiff are no way concern to the suit item No.1 and 2.”

“to amend the written statement of the defendant No.1 in para No.6 in second, third and fourth line. In the second line the said D2 to D6 to be deleted and D7 and D8 to be added and “But” to be deleted and in third line after D1 “and D4 to D6” to be added and in fourth line attesor to be deleted and added “executants” in that place.”

13. The sole plaintiff and defendant Nos.2 and 3 are sons of the first defendant. Defendant Nos.4, 5 and 6 are brother's sons of first defendant. A perusal of the record clearly reveals that the plaintiff and defendant Nos.1 to 6 belong to the same family. It appears that some of the defendants executed a sale deed in favour of defendant Nos.7 and 8. The petitioners-defendant Nos.1 and 2 are very much aware in whose favour they executed the sale deed. The suit was filed in the year 2011. After completion of the plaintiff's side evidence, the present petition is filed in the year 2017. The fact remains that the present petition was filed after six years of filing of the suit. Whatever pleaded by the petitioners in the amendment petition was within their exclusive knowledge as on the date of filing of the suit.

14. It is not the case of the petitioners that they came to know about the mistake crept in the written statement recently. Establishment of ingredients of proviso to Order VI Rule 17 C.P.C. is a *sine qua non* to allow the petition. The petitioners miserably failed to prove that despite due diligence they could not trace out the mistake crept in the written statement. For the reasons best known, the petitioners-defendant Nos.1 and 2 did not choose to file similar type of

petition at the earliest point of time at least before commencement of the trial so that the first respondent-plaintiff knows the defence taken by them. It is needless to say that one has to verify the pleadings before subscribing his signature.

15. The trial Court considered the material available on record in right perspective and dismissed the petition. The facts of the case on hand are almost identical to the facts of the cases second and third cited supra. Mere typographical mistake in the written statement is not a ground for amendment of the written statement. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial Court. There is no illegality or irregularity in the orders of the trial Court, which warrants interference of this Court, while exercising the jurisdiction under Article 227 of the Constitution of India.

16. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 06.04.2018
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