

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.7267 of 2017

ORDER :

The revision petitioners are plaintiffs in O.S.No.894 of 2006 on the file of the VIII Senior Civil Judge, City Civil court, Hyderabad. The revision respondents are defendants. Defendant Nos.1 and 2 are vendors to plaintiffs and defendant No.4. Defendant No.7 is the so-called tenant of the flat in question. Defendant Nos.5 and 6 are the so-called purchasers from defendant No.3.

2. The claim of the plaintiffs is that they purchased under registered sale deed bearing document No.803, dated 05.06.1998, in respect of flat No.101. It appears defendant No.1 herein was one of the defendants in O.S.No.1493 of 1996. In O.S.No.1493 of 1996 supra an I.A.No.1688 of 1996 stated filed and status quo order was passed, that order is not before this Court, much less to say, the status quo is against alienation. It is one of the contentions of defendant No.3 that the sale in favour of plaintiffs and defendant No.4 by defendant Nos.1 and 2 in 1998 is not legal in view of the so-called status quo order. Defendant No.3 stated to have filed C.D.No.51 of 1996 and it was disposed of in his favour before the A.P. State Consumer Dispute Redressal Commission particulars not mentioned to go into it in saying against whom it was maintained and what relief granted and whether the plaintiffs and defendant No.4 are parties to it or not. The claim of defendant Nos.5 to 7 is also in same lines as vendees from defendant No.3. Flat No.101 is 1900 sq. feet. The so-

called purchase by defendant Nos.5 and 6 from defendant No.3 was under registered sale deed. The plaintiffs claim is the flat Nos.101 and 101A while under unfinished stage purchased by them and defendant No.4 under the two documents in 1998. The claim of defendants of what plaintiffs purchased allegedly flat No.101 is in first floor and the same might be different and the boundaries also different of sale obtained from defendant No.3.

3. There is a cloud to be cleared only during trial of 101 and 101A are in ground floor or first floor pursuant to the respective sales and who got what title over it and there is any permission for the ground floor, if not, what the purchase made to the plaintiffs and defendant No.4 by defendant Nos.1 and 2 is by the then existing ground floor later converted as present first floor, from what defendant No.3 claims the flat No.101 for first floor covered by registered document No.1258 of 1993 pursuant to the agreement, dated 09.09.1992, of undivided share in the land of 50 sq. yards and the flat in question and if so any title passed to the defendants. Once there is earlier title in favour of the plaintiffs or vice versa and premature to go into those aspects. The alleged existing status quo to what extent and whether there is any violation of the status quo order in I.A.No.1688 of 1996 from the alienation in O.S.No.1493 of 1996 by plaintiffs, defendant Nos.1 and 2 to plaintiffs and defendant No.4 is also a matter to be decided after full dressed trial and for want of full material it is not possible to go into with reference to the pleadings. The so-called amendment in

relation to the pendentilite sale by document No.2268 of 2014, dated 02.12.2014. The proposed amendment of the plaint sought in April 2015.

4. The suit is no doubt of the year 2006 and after contest one of the plaintiffs filed chief-affidavit taken as PW.1 and documents marked to say trial commenced even in the year 2009. The contest by the defendants in opposing the plaintiffs proposed amendment of the plaint filed sought in April 2015, is mainly of lack of due diligence from the amended Order VI Rule 17 C.P.C. after commencement of trial in 2009/2010. The lower Court particularly from the impugned order, dated 14.11.2017, at para 11 observed that as per the amended C.P.C. due diligence is required under Order VI Rule 17 C.P.C. to be shown and once plaintiffs purchased from defendant No.4 for part of the property covered by the plaint schedule on 02.02.2014 it is not shown due diligence in seeking the amendment not immediately thereafter but in the month of April 2015.

5. The grounds in the revision impugning the same are that the impugned order is without basis and unsustainable and liable to be set aside and the proposed amendment has to be allowed.

6. Whereas, it is the submission of the learned counsel for the contesting respondents/defendant Nos.3, 5 and 6 respectively of the proposed amendment changes cause of action and it introduces the claim prejudice to the rights of the defendants respectively supra and

cannot be allowed and there is no lack of due diligence to seek the amendment and the order of the lower Court holds good.

7. Undisputedly, the sale is in December 2014 and the application for amendment filed is in April 2015 after a gap of four months. However, even from its consideration it is a subsequent event to the date of trial and not an existing event before commencement of trial to apply the due diligence principle contemplated by the amended Order VI Rule 17 C.P.C. that was not properly considered by the trial Court.

8. Now, once there is for part of the property, leave about the dispute as to 101 and 101A flats in question in existence and if so in ground floor or first floor and what title that can pass either to defendant No.3 in any alienation for defendant Nos.5 and 6 or to plaintiffs and defendant No.4 for defendant No.4's alienation of that interest in 2014 in December to the plaintiffs, in their claim of purchase from defendant Nos.1 and 2 respectively since matters to decide in trial. The proposed amendment to introduce that factum is concerned, it is not based on a cause of action totally foreign to the suit claim and not even beyond the subject matter of the lis covered by the suit claim of the plaintiffs against the defendants and once the amendment is necessary and the concept of due diligence strictly has no application for not a plea available before commencement of trial to take the recourse, the lower Court can be said gravely erred in dismissing application, that too when defendants' amendment was allowed some time before filing of the plaintiffs application by the

plaintiffs herein, the amendment of the defendant Nos.5 to 7 written statement respectively allowed in I.A.Nos.5 and 6 of 2015. Whether there is any admission in the counter of the plaintiffs in opposing those amendment applications of defendant Nos.5 to 7 is a matter for the trial Court to consider. From the above, now coming to any necessity of the proposed amendment for the effective adjudication of the lis and to shorten the multiplicity of the proceedings unnecessarily giving life to the litigation, which are the basic concepts including on the power of the Court to amend, apart from the right of parties otherwise available, if any, as well discussed in the expression of this Court in C.R.P.Nos.1751, 1752 and 1753 of 2016 in **Smt. Mareddy Seetharathnam v. Siruvuri Venkatarama Raju and others** that the object of the legislation is to enable the Court to allow amendment at any stage and the delay itself is not a ground to refuse, but for not to permit where there is by such amendment changes cause of action or tantamounts to withdrawal of a clear admission unexplained or amendment plea is mutually destructive or claim is totally apparently barred by limitation in causing prejudice to the other side of the rights if at all shown already accrued to refuse if any, vide para 7 of the expression supra. The proposed amendment from the above concerned, the supporting affidavit of plaintiff No.1 to the amendment petition of the plaintiffs is by seeking as paras 2(b) to (e) that what defendant No.4 purchased under registered sale deed No.804 of 1998 from defendant Nos.1 and 2 is flat No.101A, thereby defendant Nos.1

and 2 have no right to convey same to defendant No.3 under colour of the orders in C.D.No.51 of 1996 and defendant No.3 in turn has no right to execute sale deed No.766 of 2006 in favour of defendant Nos.5 and 6 on 16.03.2006. Defendant No.3 did not obtain any rectification deed from defendant Nos.1 and 2 in respect of flat Nos.101 and 101A sold already to plaintiffs and defendant No.4 and defendant No.3 and in turn to defendant Nos.5 and 6 in claiming through defendant No.3 shall not deny any right and title over the flat Nos.101 and 101A much less for defendant No.7 to claim as lessee under document bearing No.563 of 2007 from defendant Nos.5 and 6, dated 13.03.2007, in alleging in respect of flat Nos.101 and 101A and as flat Nos.101 and 101A of plaintiffs and defendant No.4 that in turn purchased from defendant No.4 in December 2014 that belongs to plaintiffs, thereby not separated between flat Nos.101 and 101A much less to claim purchased by defendant Nos.5 and 6 from defendant No.3 or they leased out to defendant No.7. Defendant No.1 obtained key of both flats which are joint from plaintiff No.2 and defendant No.4 and handed over to defendant No.3 illegally and they are liable to vacate flat No.101A described in the plaint schedule No.1 and hand over possession of flat No.101 and 101A to the plaintiffs and defendant No.7 is liable to deposit the rents in Court to the credit of the suit, pending disposal of the suit lis. The original C.D. record of 51 of 1996, much less the Order V C.P.C. by the defendants with their pleadings so far, leave about plaintiffs are not parties including to the

suit O.S.No.1493 of 1996 and the so-called status quo order in I.A.No.1688 of 1996 and those are not binding on the plaintiffs and defendant no.4 including the so-called alienation by defendant Nos.1 and 2 to defendant No.3 and defendant No.3 in turn to defendant Nos.5 and 6 to lease out by defendant Nos.5 and 6 to defendant No.7. This is the sum and substance of the amendment sought by the plaintiffs to the plaint including in cause of action para and in the valuation and prayer paras respectively as para 4(a) and 6(a) and in prayer portion as a(i) and b(i) respectively.

9. Whether the claim is barred by limitation and whether the plaintiffs entitled to the relief or not are the matters to be decided during trial. What is the defence of defendant No.4 to the suit if at all available is available and additionally from what plaintiffs claim from defendant No.4, when it requires to be incorporated to put an end to the lis instead of driving to file a separate suit, interests of justice could be sub served in permitting the amendment subject to right of the defendant Nos.3 and 5 to 7 to file any additional written statement opposing the amendment rather than dismissing the amendment sought for by the plaintiffs as incorporation of plaintiffs no way prejudice the right of the defence of the defendants supra. Hence, the petition can be allowed.

10. So far as the propositions placed reliance by the counsel for the defendants, the expression of this Court in **Annapureddy Chinna**

Venkatamma v. Annapureddy Krishna Reddy and others¹, this Court held that the amendment contradictory to original plea of plaintiff and to withdraw an admission cannot be permitted. Withdrawal of admission cannot be permitted is not squarely on the proposition. Here, the case of the plaintiffs including from reading of the plaint is to the claim of flat No.101 by showing 101A belongs to defendant No.4 and what the amendment after purchase from defendant No.4 by plaintiffs in December 2014 is for that flat No.101A in also saying there was no division between flat No.101 and 101A, the plaint boundary description described the same. It is not contradictory to the original plea even by such amendment nor any withdrawal of admission. Coming to the other expression of the Apex Court in **Mohinder Kumar Mehra v. Roop Rani Mehra and others**², there the facts were that evidence of both sides already adduced and the matter is at fag end of arguments after both parties lead their evidence, however, it was held to avoid any prejudice to parties, justice would be sub served by giving limited opportunity to lead additional evidence, if so desired, by allowing the amendment, saying the object of amendment is to shorten the life of the lis to prevent multiplicity of the proceedings apart from procedural law is handmaid to the administration of justice cannot be refused the amendment, merely because some mistake or negligence or inadvertence or infraction of rules of procedure, unless it is satisfied

¹ 1993 (3) ALD 276 = 1999 (3) ALT 299

² CDJ 2017 SC 1391

that the proposed amendment is malafide or to rectify a blunder already caused and it causes injury to the opposite party by such amendment to withdraw the same.

11. Leave about the earlier expressions, in **State of Madhya Pradesh v. Union of India and another**³ of an amendment to which causes prejudice to the right of the opposite party cannot ordinarily be allowed and in **Mount Mary Enterprises v. M/s.Jivratna Medi Treat Pvt. Ltd.**⁴ of an admission made cannot be permitted to be withdrawn by amendment to the prejudice of the other side. The other earlier expression of the Apex Court in **Abdul Rehman and another v. Mohd. Ruldu and others**⁵ of all amendments which are necessary for purpose of real questions in controversy between parties should be allowed if it does not change the basic nature of the suit. Apart from change in the nature of relief shall not always be considered as changes in the nature of the suit, the amendments should be discretion to allow and it should be exercised in the larger interests of doing full and complete justice between the parties. In reiterating the above, the principle of the latest expression point out in Mehra supra, though prior to that the line of decisions are due diligence concept must be established as a prerequisite for permitting the amendment and without which amendment cannot be allowed. Having regard to the above, the amendment petition is allowed.

³ CDJ 2011 SC 783

⁴ CDJ 2015 SC 087

⁵ CDJ 2012 SC 667

12. Accordingly and in the result, the civil revision petition is allowed permitting the amendment subject to costs Rs.4,000/- (Rupees four thousand only) payable by the plaintiffs-petitioners to respondents-defendants in lower Court within a time of one week from date of receipt of the order, failing which the revision is deemed dismissed for all purposes without further reference to the Court.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

22nd January 2018

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Dr. B. SIVA SANKARA RAO, J

