

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1558 of 2018

ORDER:

Heard both sides.

2. This Revision is filed challenging the order dt.08.01.2018 in I.A.No.851 of 2014 in O.S.No.148 of 2014 of the XXIV Additional Chief Judge, City Civil Court, Hyderabad.

3. Petitioner herein is the plaintiff in the above suit.

4. Petitioner filed the said suit against the respondents for declaration of title to the plaint schedule property, for perpetual injunction and to declare a Gift Settlement Deed dt.25.06.2009 executed by the 1st respondent in favour of the 2nd respondent as null and void.

5. Petitioner is none other than the brother-in-law of the 1st respondent and was married to the 1st respondent's sister, who had died of cancer on 06.06.2009. It is the contention of the petitioner that in the Gift Settlement Deed dt.25.06.2009 there is a sentence mentioning that there was a Will executed on 21.01.2009 by the petitioner's deceased wife in favour of the 1st respondent.

6. Written statement was filed by the respondents along with a counter claim relying upon the Will dt.21.01.2009.

7. Thereafter, petitioner filed I.A.No.851 of 2014 denying the execution of the Will by his deceased-wife in favour of the 1st respondent and also seeking amendment of the prayer to declare the Will Deed dt.21.01.2009 said to have been executed by his deceased-wife in favour of 1st respondent as not genuine and invalid in the eye of law.

8. Counter affidavit was filed by the respondents opposing the said application and taking the plea that this application is filed only to fill up the *lacunas* in the plaint due to the laches of the petitioner and the application for amendment cannot be allowed.

9. By order dt.08.01.2018, the Court below dismissed the said I.A., stating that filing of application for amendment is nothing but misuse of process of law to fill-up the *lacunas* in the case of the petitioner/plaintiff and cannot be encouraged. It also observed that the burden is on the 1st respondent to prove the Will under Indian Succession Act, 1925 and also under Transfer of Property Act, 1882 and relief of Declaration of the Will Deed dt.21.01.2009 is not maintainable in the eye of law and is not at all binding on the defendant.

10. Assailing the same, this Revision is filed.

11. When the law permits amendment of pleadings under Order VI Rule 17 CPC, to say that filing of application for amendment of plaint is misuse of process of law and to fill-up the *lacunas* in the case of the petitioner and ought not to be encouraged, as the trial

Court has stated, is perverse and contrary to settled legal position in **Rukhmabai v. Lala Laxminarayan And Others**¹.

12. The Supreme Court in **Rukhmabai's** case(1 supra) held that when a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendments, if he seeks to do so. It observed that Order VI Rule 17 CPC confers jurisdiction on the Court to do so.

13. In **Sampat Kumar v. Ayyakannu and Anr.**,² the Supreme Court followed the judgment in **Rukhmabai's** case(1 supra) and held that Order VI Rule 17 CPC confers jurisdiction on the Court to allow either party to alter or amend its pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because

¹ AIR 1960 SC 335

² 2002(7) SCC 559,

he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases, the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

14. This legal position is not disputed by the counsel for respondents.

15. In the instant case, when the trial in the suit has not yet commenced, and when the amendment of plaint was sought immediately after filing of the written statement and counter claim, and when no prejudice is caused to the respondents since they would have an opportunity to file an amended written statement, the Court below ought not to have dismissed the application for amendment of the plaint. It's further opinion that the relief of declaration that the Will Deed dt.21.01.2009 is not valid, is not maintainable also cannot be sustained because it has no jurisdiction to express its opinion on the merits of the plea raised in the amendment while deciding whether or not to allow the application for amendment.

16. Therefore, this Civil Revision Petition is allowed; the order dt.08.01.2018 in I.A.No.851 of 2014 in O.S.No.148 of 2014 of the

XXIV Additional Chief Judge, City Civil Court, Hyderabad is set aside and the said I.A., is allowed. No order as to costs.

17. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

14th June, 2019.

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