

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.2770 of 2014

ORDER :

Heard both sides.

2. This Civil Revision Petition is filed challenging the order dt.03.04.2014 passed in I.A.No.383 of 2013 in O.S.No.216 of 2010 on the file of Senior Civil Judge, at Miryalaguda.

3. The petitioners herein are defendant nos.6 to 8 in the above suit.

4. The 1st respondent / plaintiff filed the said suit for partition of the plaint schedule properties and for 29.17 % share therein. He alleged that the plaint schedule property belongs to his natural father Ananta Ramaiah who died *intestate*; that during the lifetime of his father, though there was an understanding to partition the properties and it was also reduced into writing, due to unavoidable circumstances, the partition was not implemented; that though he was given in adoption to another family of Nanda Venkatappaiah and his wife Kamamma the said adoption was not accepted by the Civil Courts and even up to the Supreme Court of India; and thus, he did not get a share either in the natural family or in the adoptive family.

5. Thereafter, Written Statement was filed by defendant nos.2 and 7 opposing the suit claim. They contended that partition was already implemented; that petitioner is not the son of Ananta Ramaiah as is claimed by him in view of his adoption to the family of Nanda

Venkatappaiah and his wife Kamalamma; that in view of the said adoption, 1st respondent cannot claim any partition of the properties left by the said Ananta Ramaiah; and while stating that Ananta Ramaiah died in the year 1995, they contended that there was a partition among the co-sharers and it was acted upon, and even the 1st respondent got a share which he sold away to the 2nd defendant.

6. After seeing the said Written Statement, the 1st respondent filed I.A.No.383 of 2013 to amend the ~~plaint~~ contending that he came to know of several facts from the Written Statements filed by the 2nd defendant and 7th defendant; that he has realized that the pleadings and prayer made originally would not be sufficient and it is necessary for him to amend the prayers in the plaint and add certain paragraphs in the plaint, and he ought to be permitted to do so.

7. Counter-affidavit was filed by 7th defendant opposing the same and alleging that the amendment sought by the 1st respondent is barred by limitation and they cannot be permitted. He contended that it would amount to substituting a new cause of action and changing the subject-matter of the suit, apart from being *mala fide*.

8. By order dt.03.04.2014, the Court below allowed the said application. It observed that, according to 1st respondent, he was denied a share in the property of the adopted family because the adoption was not accepted and also in his natural family, i.e., family of Ananta Ramaiah to whom he was born; that parties can be

permitted to put their respective evidences on various aspects involved in the suit at the time of trial, and the correctness of the pleas taken by the 1st respondent cannot be gone into. It also observed that issues of limitation can be gone into during the trial stage, and not at the stage when amendment is proposed. It also observed that petitioner cannot be asked to file a fresh suit again when already the instant suit is pending between them.

9. Challenging the same, the present Civil Revision Petition is filed.

10. The counsel for petitioners reiterated the stand of the petitioners in the Court below that it would change the cause of action in the suit and also change the nature of the suit, and the pleas of 1st respondent in the amendment application are barred by limitation.

11. The counsel for 1st respondent refuted the said contentions and supported the order passed by the Court below.

12. I have noted the contentions of both sides.

13. In **Abdul Rehman v. Mohd. Ruldu**¹, the Supreme Court held that the object of Order VI Rule 17 of Civil Procedure Code, 1908 is that Courts should try amendments of a case that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties if it does not cause injustice or prejudice to the other side. It observed

¹ (2012) 11 S.C.C. 341

that power to allow amendment is wide and can be exercised at any stage of the proceeding in the interest of justice, that the main purpose of allowing amendment is to minimize litigation and the plea that relief sought by way of amendment was barred by limitation is to be considered in the light of facts and circumstances of each case.

14. The above principle was reiterated in **Gurbakhsh Singh and others vs. Buta Singh and another**².

15. In the instant case, admittedly, the trial in the suit has not started. Therefore, the proviso to Order VI Rule 17 of Civil Procedure Code, 1908 has not application. Whether the pleas raised in the application for amendment by the 1st respondent are true or not cannot be gone into while deciding whether or not to permit amendment of the plaint.

16. This principle has been held in **Sampath Kumar vs. Ayyakannu and another**³ wherein it was observed that merits and averments sought to be incorporated by way of amendment are not be judged at the stage of allowing prayer for amendment.

17. As rightly observed by the Court below, in the instant case, issues of limitation can be gone into at the time of trial after framing of appropriate issue in that regard, and no prejudice would be caused to the petitioners since they would get an opportunity to file an

² (2018) 6 S.C.C. 567

³ (2002) 7 S.C.C. 559

amended Written Statement or an additional Written Statement in the suit.

18. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India with the order passed by the Court below.

19. Accordingly, the Civil Revision Petition fails and it is dismissed. No order as to costs.

20. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 26.04.2019

Ndr/*

