

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.2804 of 2018

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.09-02-2018 in I.A.No.993 of 2015 in O.S.No.864 of 2009 of the XVII Additional Senior Civil Judge, City Civil Court at Hyderabad.

2. Petitioners herein are defendant Nos.2 and 4 in the said suit.
3. The 1st respondent/plaintiff filed the said suit against petitioners and 2nd respondent for recovery of possession of plaint-B schedule property by evicting defendant Nos.1, 2 and 4 therefrom and for recovery of certain amounts being past damages from July, 2006, future damages and permanent injunction.
4. After filing of the suit, the 1st defendant died and 2nd petitioner herein/4th defendant was impleaded as his legal representative.
5. Before the trial commenced, the 1st respondent filed I.A.No.993 of 2015 seeking amendment of the plaint by adding para-V(a) and also seeking the relief of declaration that sale deed dt.22-06-2006 allegedly executed by 1st petitioner/2nd defendant in favour of 2nd petitioner/3rd defendant is illegal, null and void and not binding on her.

6. In the affidavit filed in support of said application, it is contended by 1st respondent that 2nd petitioner/2nd defendant, along with deceased 1st defendant, purchased the B-schedule property from 3rd defendant under registered sale deed dt.22-06-2006; that the sale deed dt.18-07-1998 obtained by 3rd defendant from the Court of II Senior Civil Judge, City Civil Court, Hyderabad in O.S.No.1533 of 1996 under a decree for specific performance of showed that it was executed only in respect of B-schedule property and undivided share in the land was not transferred or sold to the 2nd respondent/3rd defendant therein. It is contended that 2nd respondent/3rd defendant cannot therefore convey better title than what she had and no prejudice would be caused to the petitioners and 2nd respondent if the said application is ordered.

7. Counter-affidavits were filed by petitioners opposing the said application contending that the sale deed dt.18-07-1998 has no defect in it, and it is not an illegal sale by 2nd respondent/3rd defendant to 2nd petitioner. They contended that the proposed amendment cannot be permitted since it changes the nature of the suit and also would amount to superseding a lawfully obtained decree in O.S.No.1533 of 1996.

8. By order dt.09-02-2018, the Court below allowed the said application on payment of costs of Rs.500/-. It observed that trial has not commenced in the suit and merits of the proposed amendment cannot be gone into at the time of considering whether or not

application for amendment is to be allowed. It relied upon the judgment of this Court in **Buragapu Meenakshi Vs. Satya Panigrahi and another**¹ and **Sri Venkata Ramana Arcade Vs. Y.Vijaya Lakshamma (died) per LRs**² to come to the said conclusion. It observed that the proposed amendment did not change the nature of the suit, nor it would introduce a fresh cause of action, and it is necessary for determining the real question on controversy to put a quietus to the litigation. It also observed that the said amendment is not barred by limitation.

9. Assailing the same, this Revision is filed.

10. Learned counsel for petitioners contended that the story now made out in the application for amendment of the plaint is not correct factually, and the Court below ought to have gone into the merits of the proposed amendment and rejected it.

11. Learned counsel for petitioners did not dispute the principle laid down in **Buragapu Meenakshi** (1 supra) and **Sri Venkata Ramana Arcade** (2 supra) that correctness or falsity of the case in the amendment could not be gone into at the time of considering whether an application for amendment should be allowed or not. Therefore, this contention is without any merit.

¹ 2014(4) ALD 621

² 2014(1) ALD 281

12. I also do not agree with the contention of the learned counsel for petitioners that amendment of plaint changes the cause of action and nature of suit.

13. As regards the plea of bar of limitation raised by the petitioners, the Supreme Court in **Raghu Thilak D.John Vs.S.Rayappan and others**³ and **B.K.Narayana Pillai Vs. P.Pillai and others**⁴ has held that amendment of pleadings can be allowed even if there is a plea by respondent that such amendment is barred by limitation, and that an issue ought to be framed on the issue of limitation which should be gone into by the Court below while deciding the pleading.

14. In this view of the matter, I 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.

15. The Civil Revision Petition fails and it is accordingly dismissed. No costs.

16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-07-2019

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³ AIR 2001 SC 699

⁴ AIR 2000 SC 614