

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.7013 of 2018

ORDER :

This Civil Revision Petition is filed challenging the order dt.12.10.2018 passed in I.A.No.183 of 2018 in O.S.No.39 of 2015 on the file of the Senior Civil Judge, Shadnagar.

2. The petitioners herein are legal representatives of the sole plaintiff in the above suit.

3. The sole plaintiff/ 1st petitioner filed the said suit against respondents for a permanent injunction restraining respondents from interfering with his alleged peaceful possession and enjoyment of the plaint 'A' and 'B' schedule properties.

4. The 3rd respondent, 1st petitioner, the 2nd respondent and 10th respondent are brothers and sons of C. Ram Reddy.

5. The 1st petitioner contended that he is the son of one Sri C. Ram Reddy and his elder brother is C. Laxminarayana Reddy; that the said C. Ram Reddy purchased plaint 'A' and 'B' Schedule properties under an Agreement-of-Sale from their previous owners as *Kartha* of the Hindu Undivided Family (H.U.F.) with HUF funds; that his father C. Ram Reddy was dependent on the elder son who was an educated person; and the latter induced his father and obtained a sale deed in his own name fraudulently without the knowledge of the father. He alleged that his elder brother had no independent source of income to

acquire any property including the suit schedule property, and he was dependent on the HUF income; that there was a family settlement between himself, respondents 2 and 10 on 28.07.1989; and under this settlement plaintiff 'A' and 'B' schedule properties were allotted to him. He alleged that pattadar pass book and title deeds were issued to him, and he was cultivating the lands, but defendant no.10, who is his other brother, developed evil intention and joined hands with defendant nos.1 to 9 in collusion with 3rd respondent and attempted to trespass into the suit schedule property on 10.04.2010 and 15.05.2010 and so he gave a police complaint on 24.05.2010. According to him, there was also another attempt to grab the suit schedule property by respondents on 13.06.2010, and so he filed the above suit.

6. Written Statement was filed by respondent nos.2, 3 and 5 to 9 opposing the suit claim and contending that there is a serious title dispute in respect of the suit schedule property, and respondents are not admitting the title or possession of 1st petitioner, and he should therefore file a suit for declaration of title and possession or injunction, if he is so advised. They contended that 1st petitioner was not in possession of the suit schedule property, and so, there was no question of dispossessing him. They also contended that the suit schedule properties are not properly described, and they are not identifiable on the spot as per the description given in the plaint schedule. They also contended that the un-registered family settlement on which the 1st petitioner was basing his claim in the suit,

is inadmissible in evidence and cannot be looked into. They also contended that pattadar pass book and title deed issued in the name of 1st petitioner are illegal and cannot be looked into.

7. Thereafter, the 1st petitioner died and his legal representatives were impleaded in the suit as petitioner nos.2 to 4.

8. They then filed I.A.No.183 of 2018 seeking amendment of plaint by seeking relief of declaration of title and recovery of possession instead of permanent injunction. They contended that they were dispossessed highhandedly on 18.01.2018 by respondent nos.2 to 9, pending suit; and therefore, they are entitled for recovery of possession. Certain additional pleadings in the form of paragraphs 5(a) to 5(g), paras 9(a), 10(a), and also amendment of the prayer were sought.

9. Counter was filed by 5th respondent on behalf of respondent nos.2, 3 and 6 to 9 opposing the application for amendment. He contended that 1st petitioner obtained interim injunction against the respondents, but later it was vacated on merits. They denied that they had got the suit lands on 17.01.2018 and contended that petitioners were never in possession of the suit lands at any point of time, and so the question of occupying the suit lands on 17.01.2018 does not arise. They contended that the application for amendment of pleading was made after commencement of trial, and after cross-examination of PW.1 and part cross-examination of D.W.1; that petitioners had not

given any valid reasons for seeking amendment after commencement of trial; and so, the application for amendment was not maintainable.

10. By order dt.12.10.2013, the Court dismissed the said I.A.No.183 of 2018 for amendment. It held that except relying on an F.I.R. dt.18.01.2018, which is said to have been lodged by petitioners against respondents, the petitioners did not plead any reason in support of their case for seeking amendment. It observed that there was no averment in the application for amendment that the proposed amendment could not be sought for before commencement of trial in spite of due diligence, and that the amendment is necessary to determine real facts and controversy between the parties and so, the conditions requisite for allowing the amendment are not satisfied. It further held that the suit was filed in the year 2010 and the Written Statement was filed in 2010 itself; and eight years later amendment is sought now seeking relief of declaration of title and recovery of possession. It held that in the Written Statement itself respondents claimed that petitioner is not the owner of the suit land, and that the suit lands are not H.U.F. property; and there is no family settlement as is alleged by 1st petitioner. It therefore held that there was clear denial of title of the 1st petitioner to the suit schedule property in 2010 itself, that trial commenced in the year 2013 and petitioners' evidence was closed on 15.12.2017, and the present application was filed on 27.03.2018 when the matter is posted for cross-examination of D.W.1. It held that Article 58 of the Limitation Act, 1963 prescribes limitation

of three (03) years for seeking declaration of title and the present application, filed after filing of the Written Statement, is clearly barred by Law of Limitation. It observed that the relief sought by petitioners is barred by time and it would cause prejudice to respondents.

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

12. The counsel for petitioners contended that the Court below had erred in dismissing the application for amendment of plaint; that when the dispossession of petitioners from the subject land, according to the application for amendment, took place on 17.01.2018 pending suit, the Court is not correct in stating that petitioners ought to have sought amendment before the commencement of trial. It was also contended that petitioners had lodged F.I.R. on 18.01.2018, and the correctness of the plea taken in the application for amendment cannot be gone into by the Court below while deciding whether or not to permit the amendment. He also contended that merely because the respondents had disputed the title initially, there was no obligation on the part of petitioner to seek declaration of title at the time of filing of suit, and the issue of bar of limitation has to be framed and then gone into by the Court below.

13. Sri Swaroop Oorilla, counsel for respondent nos.2, 5 and 6, refuted the above contentions and supported the order passed by the

Court below. He also contended that these respondents would represent the other respondents also.

14. I have noted the contentions of both sides.

15. It is the contention of petitioners that, pending suit, petitioners had been dispossessed from the suit schedule property on 18.01.2018, and therefore, they were forced to seek amendment of the plaint by seeking declaration of title as well as recovery of possession.

16. In **Adusumilli Venkateswar Rao and another vs. Chalasani Hymavathi**¹, this Court has held that a suit for injunction can be converted into a suit for possession and such contention does not amount to alteration or nature of the suit.

17. In **Sampath Kumar vs. Ayakannu**², the suit was filed for permanent injunction alleging that plaintiff was in possession of the suit schedule property. The defendant filed Written Statement denying the plaint averments and contended that on the date of institution of the suit he was in possession of the suit schedule property, and so, the suit should be dismissed. The said suit was instituted in 1998. In 1999, before commencement of trial, the plaintiff filed an application under Order VI Rule 17 of Civil Procedure Code, 1908 seeking amendment of plaint stating that in January, 1989, during pendency of the suit, the defendant had forcibly dispossessed the plaintiff. He therefore sought for relief of

¹ AIR 1990 A.P. 161

² (2002) 7 S.C.C. 559

declaration of title and consequential relief of delivery of possession. This application for amendment was opposed by the defendant stating that plaintiff was changing the cause of action through amendment which was not permissible. It was also contended that the defendant had perfected his title by adverse possession over the suit schedule property rendering the suit for recovery of possession barred by time, and valuable right had accrued to the defendant which was sought to be taken away by the proposed amendment. The Trial Court as well as the High Court rejected the plea for amendment.

18. The Supreme Court however held that since the plaintiff in his application for amendment proposed to introduce the cause of action which had arisen to the plaintiff during pendency of suit, though the defendant denied the plea of plaintiff and contended that plaintiff was not in possession of the property even before the institution of the suit, the basic structure of the suit would not be altered by the proposed amendment since what is sought to be changed is the nature of the relief sought for by plaintiff.

19. It observed that plaintiff can anyway file a fresh suit, and if he could do so, he can still amend the pleading in the suit already filed, and the amendment would curtail multiplicity of legal proceedings. It observed that Order VI Rule 17 of Civil Procedure Code, 1908 confers jurisdiction on the Court to allow either party to alter or amend its proceedings at any stage of the proceedings on such terms as may be adjudged; and such amendments, as are directed towards

putting forth 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 of the suit is proceeded. Pre-Trial amendments are allowed more liberally than those which are sought to be made after commencement of the trial or after conclusion thereof; mere delay cannot be a ground for refusing a prayer for amendment; and there is no straight-jacket formula that post-trial amendments which might prejudice the defendants cannot be permitted. It also observed that merits of the averments sought to be incorporated by way of amendment are not be judged at the stage of allowing prayer for amendment.

20. In the instant case, though the application for amendment has been sought after the trial commenced, it is important to note that the alleged dispossession of petitioners by respondents is alleged by the petitioners to have occurred *after* the trial commenced. Whether this fact is true or not cannot be gone into while deciding whether or not to allow the application for amendment. Merely because the respondents pleaded that they were in possession of the suit schedule property on the date of filing of suit, the said plea cannot be accepted as the gospel truth, and the question as to who was in possession as on the date of filing of the suit has to be determined in the suit.

21. In **Ramiah v. N. Narayana Reddy**³, it was held that Article 64 of the Limitation Act, 1963 is restricted to suits for possession on dispossession or discontinuance of possession. In order to bring a suit within the purview of that article, it must be shown that the suit is in terms as well as in substance based on the allegation of the plaintiff having been in possession and having subsequently lost the possession either by dispossession or by discontinuance.

22. In **Pankaja v. Yellappa**⁴, the Supreme Court considered a somewhat similar situation akin to the instant case. In that case too initially a relief of perpetual injunction and recovery of possession was asked for, but later it was alleged that there was dispossession pending suit relief of declaration of title was sought. Like in the instant case, it was opposed relying on Art.58 of the Limitation Act, 1963. The trial court and the High Court rejected the application of amendment accepting the said plea. But the Supreme court reversed the said decisions and held:

“ 17.While the learned counsel for the defendant-respondents pleaded that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the appellants in this case ought to have been done within 3 years when the right to sue first accrued, the appellant-plaintiff contends that the same does not fall under the said entry but falls under Entry 64 or 65 of the said Schedule of the Limitation Act which provides for a limitation of 12 years, therefore, according to them the prayer for declaration of title is not barred by limitation, therefore, both the courts below have seriously erred in not considering this question before rejecting the prayer for amendment. In such a situation where there is a dispute as to the bar

³ (2004) 7 SCC 541

⁴ (2004) 6 SCC 415

of limitation this Court in the case of **Ragu Thilak D. John v. S. Rayappan**⁵ has held: (SCC p. 472)

“The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for.”

18. We think that the course adopted by this Court in **Ragu Thilak D. John case**(5 supra) applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendment sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief.

19. We have already noted, hereinabove, that there is an arguable question whether the limitation applicable for seeking the relief of declaration on facts of this case falls under Entry 58 of the Limitation Act or under Entry 64 or Entry 65 of the Limitation Act which question has to be decided in the trial, therefore, in our view, following the judgment of this Court in the case of **Ragu Thilak D. John**(5 supra) we set aside the impugned orders of the courts below, allow the amendment prayed for, direct the trial court to frame necessary issue in this regard and decide the said issue in accordance with law bearing in mind the law laid down by this Court in the case of **L.J. Leach and Co. Ltd v. Jardine Skinner**⁶“

23. The above case thus indicates that where factual basis has already been laid down in the plaint in regard to the title, as in the

⁵ (2001) 2 SCC 472

⁶ AIR 1957 Sc 357

instant case, amendment of plaint can be permitted and relief of declaration of title can be allowed to be sought because the dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for.

24. I do not agree with the observation of the Court below that the relief of declaration of title sought by petitioners is barred by Limitation. The Court below can frame an issue about the bar of limitation after Written Statement is amended by respondents and then proceed to decide it in accordance with law.

25. When the alleged dispossession took place pending suit according to the petitioners, the 1st petitioner cannot be expected to anticipate their dispossession after filing of the suit, and mention about it in the plaint as originally filed.

26. Proviso to Order VI Rule 17 of Civil Procedure Code, 1908 will not bar seeking amendment of plaint in the instant case since the alleged dispossession took place on 17.01.2018 long after the trial commenced on 22.03.2013.

27. So the interim stay granted on 06.12.2018 in I.A.No.1 of 2018 in C.R.P.No.7013 of 2018 shall stand vacated.

28. Accordingly, the Civil Revision Petition is allowed. The impugned order dt.12.10.2018 passed in I.A.No.183 of 2018 in O.S.No.39 of 2015 by the Senior Civil Judge, Shadnagar is set aside; and I.A.No.183 of 2018 in O.S.No.39 of 2015 is allowed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 30.04.2019

Ndr/*

