

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.6755 of 2017

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.21.09.2017 in I.A.No.3079 of 2011 in O.S.No.695 of 2007 passed by the XXIV Additional Chief Judge, City Civil Court, Hyderabad.

The petitioners are defendant Nos.8 to 11 and 13 in the suit.

Respondent Nos.1 and 2 filed the said suit initially against respondent Nos.3 to 7 herein for specific performance of an Agreement of Sale dt.14.11.1996 in respect of the suit schedule property.

Subsequently, the petitioners were impleaded as defendant Nos.8 to 13 by order dt.03.07.2017 in I.A.No.532 of 2017. The basis for impleadment of the petitioners appears to be that on 20.09.2001, 21.09.2001 and 22.09.2001 certain sale deeds were executed by defendant Nos.1 and 2 in favour of defendant No.7 and others.

I.A.No.3079 of 2011 is filed by respondent Nos.1 and 2 to amend the plaint seeking to challenge the said sale transactions by including paragraph Nos.11-a and 11-b and also to make other amendments in the cause of action paragraph and the relief paragraph.

Though counter affidavit was filed by the petitioners opposing the said reliefs, contending that there is a delay in filing the said application for amendment and that the relief claimed is time barred, by impugned order dt.21.09.2017, the Court below allowed the said application stating that the amendment sought by respondent Nos.1 and 2 is only a consequential amendment pursuant to the addition of the parties.

Challenging the said order dt.21.09.2017, this Civil Revision Petition is filed.

Learned counsel for the petitioners contended that the Court below ought not to have allowed application for amendment filed by respondent Nos.1 and 2, since the relief sought by way of amendment is time barred. He also contended that there is a change in the cause of action and that there cannot be any consequential amendment.

On the other hand, learned counsel for respondent Nos.1 and 2 refuted the said contentions. He contended that the trial in the suit has not yet commenced and no prejudice would be caused to the petitioners by such amendment, since they would have an opportunity to file an additional written statement or amend the written statement already filed.

I have noted the contentions of the learned counsel for the respective parties.

Though learned counsel for the petitioners sought to contend that the trial had already commenced, admittedly, there is no pleading in the counter affidavit filed by the petitioners in I.A.No.3079 of 2011 before the Court below that the application for amendment of the plaint was filed after the trial was commenced. Since the trial is not proved to have commenced by the date of filing of I.A.No.3079 of 2011, the proviso to Order 6 Rule 17 C.P.C. has no application.

In B.K.N. NARAYANA PILLAI v. P. PILLAI AND OTHERS¹, the Supreme Court held that the purpose of Order 6 Rule 17 C.P.C. is to allow either party to alter or amend the pleadings in such a manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice and while deciding the prayers for amendment, the Courts should adopt liberal approach and should not adopt hyper-technical approach. It also stated that amendments are to be allowed to avoid uncalled for multiplicity of litigation.

In the instant case, it is the case of respondent Nos.1 and 2 that the suit schedule property had been alienated by respondent Nos.3 and 4 in favour of respondent No.9/defendant No.7 and that the said sales are invalid, inoperative, null and void and are liable to be cancelled for all purposes.

¹ (2000) 1 SCC 712

Since the main suit is for specific performance of an Agreement of Sale dt.14.11.1996 in respect of the suit schedule property, and since respondent No.9 had been impleaded as defendant No.7 in the suit vide order dt.03.07.2017 in I.A.No.532 of 2017, and since the sale in favour of respondent No.9 is after the date of execution of Agreement of Sale dt.14.11.1996 in the suit, it cannot be said that there is any change of cause of action in the suit, because the original relief of specific performance of Agreement of Sale dt.14.11.1996 is still retained and has not been given up; and, in addition, eviction of the persons in occupation of the suit schedule property is sought, after declaring the sale transactions, which occurred in 2001, as null and void.

As regards the plea of bar of limitation raised by the learned counsel for petitioners, the petitioners would be entitled to file an additional written statement or amend their existing written statement and would have liberty to raise all the pleas in defence of their claim and, if any such plea of bar of limitation is raised, the Court below shall frame an issue in that regard and decide the same.

I, therefore, do not find any error of jurisdiction in the impugned order dt.21.09.2017 passed by the Court below warranting interference by this Court.

The Civil Revision Petition, therefore, fails and it is accordingly dismissed. Interim order granted by this Court on 04.12.2017 shall stand vacated. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

04.04.2019.

Msr



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