

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION NO.3066 OF 2019

Date : 20.02.2020

Between:

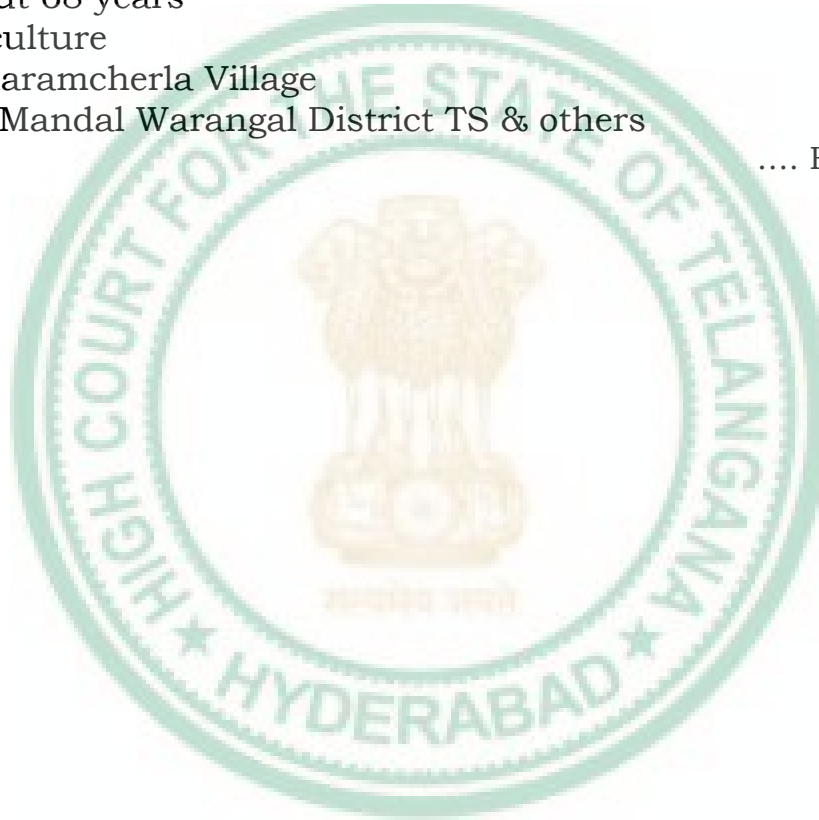
Smt Pabbati Vasantha W/o Vishnu Reddy
aged about 41 years
Occ Agriculture R/o Chada Village
Athmakur Mandal Nalgonda Dist T S

.... Petitioner

And

Smt Yela Chandramma W/o Late Yela Somireddy
aged about 68 years
Occ Agriculture
R/o Peddaramcherla Village
Jangoan Mandal Warangal District TS & others

.... Respondent



The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO**CIVIL REVISION PETITION NO.3066 OF 2019****ORAL ORDER:**

Heard learned counsel for petitioner Sri Bethi Venkateshwarlu and Sri M Madhava Reddy for respondent no.2.

2. Revision petitioner is plaintiff. She instituted O.S No. 61 of 2011 in the Court of Senior Civil Judge, Jangaon praying to grant preliminary decree for partition of schedule A & B properties by allotting 1/4th share to the plaintiff and defendants by fixing the metes and bounds and to pass final decree by appointing an Advocate Commissioner for making partition after fixing metes and bounds and for separate possession to each party.

3. The trial commenced on 29.4.2013 and evidence of prosecution witnesses was completed, chief and cross examination of D.W.1 to 3 was also completed and when the matter was coming up for cross examination of D.W.4, plaintiff filed I.A. No. 826 of 2019 praying for amendment of plaint by adding relief para (b)(i) and to add paragraph VI (a).

4. By amendment of prayer, petitioner seeks declaration that the registered gift settlement deeds bearing document Nos. 1052/1986 dated 22.9.1986 and document no.859/2000 dated 16.6.2000 executed by Late Yela Somi Reddy in favour of defendant no.2 are null and void and not binding on plaintiff. By the order dated 18.11.2019 against which this revision is preferred, the Court below dismissed the said application.

5. According to learned counsel for petitioner, in the plaint, plaintiff has specifically raised the plea that by misleading or by exerting

undue influence on the father of the plaintiff, the second defendant obtained registered gift deeds. He would therefore submit that though pleading was already raised in the plaint, due to inadvertence the previous counsel appearing for plaintiff did not incorporate the relief in the prayer portion and to avoid further complications, the application is filed for amendment of the plaint. He would submit that by amendment of the plaint no new plea is raised and no prejudice would be caused to the defendants. He would further submit that plaintiff is not seeking to lead any additional evidence in support of the proposed prayer and he would be relying upon the evidence already brought on record. He would therefore submit that the trial Court has erred in not accepting the application for amendment of the prayer, causing grave injustice to the plaintiff. According to learned counsel, it would result in miscarriage of justice. In support of his contentions he placed reliance on the judgment in **G.S. Prakash Vs Polasa Hanumanlu¹** and **Gadamsetty Veeranjeyulu Vs Pokuru Ramaiah and Another²**.

6. From the material on record, it is seen that the suit is at the fag end of trial. Plaintiff earlier filed I.A. No. 216 of 2018 praying for amendment of the plaint by adding the suit schedule “C to E” properties in the plaint and also sought for extensive amendment of pleadings. By order dated 4.10.2018 said application was dismissed. Aggrieved thereby, plaintiff preferred C.R.P. No. 650 of 2018 and the same was also dismissed by this Court.

7. In the averments made in the affidavit filed in support of I.A. No. 216 of 2018, for the reasons best known to her, there is no whisper about the alleged registered gift deeds and she did not seek amendment

¹ LAWS (APH) 2014 (7) 114

² LAWS (APH) 2018 (7) 35

of relief as is now sought. In the affidavit filed in support of I.A. No. 826 of 2019 also petitioner has not mentioned reasons as to why she did not seek amendment of the prayer as is now sought in I.A. No. 216 of 2018. The only plea raised in the present I.A. is that the then counsel appearing for plaintiff inadvertently did not include in the plaint the prayer against registered gift settlement deeds and counsel who entered appearance later, having gone through the entire record, advised for seeking amendment of the prayer to incorporate prayer to declare the registered gift settlement deeds as null and void and not binding on plaintiff.

8. From the order of the Court below, it is seen that the trial Court has considered all aspects urged before the Court. The trial Court observed that counsel who entered appearance on 4.11.2013 produced P.W.s 2 to 4 and therefore rejected the contention of the plaintiff that new counsel on record only recently entered appearance. In fact, it appears, the new counsel filed I.A. No. 216 of 2018.

9. As noticed by Court below, even by the time the suit was instituted, plaintiff was aware of the registered gift settlement deed executed by her father, but for the reasons best known, no declaration was sought against said gift settlement deeds in the plaint, allowed conducting of trial and when trial is about to be closed, this I.A. is filed, more than 8 years after institution of the suit.

10.1 In **G.S. Prakash**, learned single Judge of this Court formulated points which have to be considered by the trial Court in accepting prayer for amending of pleadings.

10.2 It is seen from the said points formulated by the learned single Judge, an amendment application can be refused where party seeks to change the character and constitution of the suit / substitute cause of action / introduce a distinct cause of action; where the valuable defense by way of admissions by a party has accrued to the opposite party and by the proposed amendment the party intends to resile from such admissions; where the position of the other party will be altered by the proposed amendment and the injury caused to him by such alteration could not be compensated in costs; **where the proposed amendment lacks bonafides and is far too belated and the party seeking the amendment was not diligent in approaching the court.**

11. The various contingencies mentioned in **G.S. Prakash**, do not support the claim of the plaintiff herein. The plaintiff was not diligent and history of litigation noticed above would point out that the present claim for amendment lacks bonafides and is far belated.

12. In **Gadamsetty Veeranjeyulu**, plaintiff filed application for permission to amend the plaint to enable the plaintiff to seek relief of declaration as regards 'CF' wall line with a width of 8 inches and length of about 65 feet and delivery of possession of the same after directing the defendants to remove the encroachments and permit the plaintiff to remove such constructions as per due process of law. Such application was filed before commencement of trial. On reviewing the precedent decisions and taking note of peculiar facts of the case, learned Judge observed that though amendment was sought after 11 years from the date of institution of the suit, the plaintiff was not debarred from institution of new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint and that

the pleadings would disclose that amendment was sought on the ground that during the pendency of the suit the defendants encroached vacant site of about 8 inches and made constructions and violated ad interim orders and therefore, amendment was sought based on the subsequent events and there would be no change in the nature of the suit.

13. In the case on hand, the facts are entirely different. The amendment is sought after 8 years and by the time the amendment application was filed, the trial was almost at the final stage. Plaintiff filed I.A. No. 218 of 2018 praying to grant leave to amend the plaint but there was no whisper in the said application about gift settlement deeds and to seek this very prayer. The said I.A., was dismissed. Therefore, trial continued. It is not the case of the plaintiff that in spite of due diligence, the relevant material was not available in her possession at the time of institution of the suit. On the contrary plaintiff was aware of the execution of the registered gift settlement deeds much prior to institution of suit and mentioned them in the plaint.

14. In the facts of this case, the two decisions relied by the learned counsel do not come to the aid of petitioner.

15. It is no doubt true that, *'Procedural law not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice'* (**Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and others**³- paragraph-14), at the same time, as observed by the Supreme Court, *'no person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is*

³ (2006) 1 SCC 46

*pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode.” (see Blyth Vs.Blyth (1996) 1 All ER 524)’. (paragraph 13 of **Shaikh Salim Haji**).*

16. In **BAGAI CONSTRUCTION Vs GUPTA BUILDING MATERIAL STORE**⁴, the Trial Court rejected the applications filed under Order VII/Rule 14 read with Section 151 of CPC and Order 18/Rule 17 of CPC. On filing revision, the High Court reversed the decision of Trial Court. On appeal Supreme Court upheld the decision of the Trial Court. Supreme Court observed as under:

“15. After change of various provisions by way of amendment in the Code of Civil Procedure, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. ***In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered.....***” (emphasis supplied)

17. Noticing the object behind introducing stringent provisions in CPC, in **Voruganti Narayana Rao Vs. Bodla Rammurthy and others**⁵, learned single Judge of this Court cautioned the Courts below by observing that the amendments are carried out ‘*to curb the phenomenal delays in the procedural aspects leading to procrastination of the proceedings before the Civil Court..... Undoubtedly, unduly liberal approach in this regard would frustrate the purpose for which the provisions of the Code of Civil Procedure are amended*’. (paragraph 7)

⁴ (2013) 14 SCC 1

⁵ 2011 (6) ALT 299

18. From the material on record, it is seen that plaintiff was not diligent in prosecuting her remedies. It is a belated application and lacks bonafides in prosecuting this I.A. at the fag end of the trial. In the facts of this case, I do not see error in the decision arrived at by the trial Court warranting this Court to exercise revisional jurisdiction. Revision fails and it is accordingly dismissed. Miscellaneous petitions, if any pending, are closed.

JUSTICE P.NAVEEN RAO

Date: 20-2-2020
Tvkk



HONOURABLE SRI JUSTICE P. NAVEEN RAO



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