

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.5129 OF 2011

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioners/defendant Nos.4 and 5 aggrieved by the order, dated 02.09.2011, passed in I.A.No.682 of 2011 in O.S.No.17 of 2003 by the XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, wherein the subject Interlocutory Application filed by respondent No.1/plaintiff, under Order VI Rule 17 C.P.C. read with Rule 28 of the Civil Rules of Practice, seeking to amend the plaint, was allowed.

2. Heard Ms. Manjari S. Ganu, learned counsel for the revision petitioners/defendant Nos.4 and 5, and Sri A. Sudershan Reddy, learned Senior Counsel appearing for respondent No.1/plaintiff. Perused the record.

3. Learned counsel for the revision petitioners/defendant Nos.4 and 5 would submit that the subject Suit was filed in the year 2003 by respondent No.1/plaintiff against respondent Nos.2 to 4/defendant Nos.1 to 3 and written statement was also filed by respondent Nos.2 to 4/defendant Nos.1 to 3. The revision petitioners/defendant Nos.4 and 5, having come to know about the pendency of the subject Suit, filed I.A.No.91 of 2003 to get themselves impleaded in the subject Suit, contending that they have purchased the suit schedule property under Sale Deeds, dated 18.01.2003. The said Interlocutory Application was

allowed on 14.07.2003. Consequently, the revision petitioners/defendant Nos.4 and 5 filed written statement in the subject Suit, wherein they have specifically mentioned about the purchase of the suit schedule property on 18.01.2003. The trial had been commenced in the subject Suit. PW.1 filed his chief examination affidavit, but did not undergo cross-examination for two years. Thereafter, the subject Suit was dismissed for default on the part of respondent No.1/plaintiff. After getting the subject Suit restored and in spite of having knowledge of registration of the suit schedule property in favour of the revision petitioners/defendant Nos.4 and 5 in the year 2003, belatedly i.e., after a lapse of eight years, respondent No.1/plaintiff had come up with the subject Interlocutory Application seeking to amend the plaint, so as to seek the prayer to cancel the Sale Deeds, dated 18.01.2003, executed by respondent No.2/defendant No.1 in favour of the revision petitioners/defendant Nos.4 and 5. The same was allowed vide the impugned order, dated 02.09.2011. The limitation prescribed to file a Suit for cancellation of the Sale Deed is only three years from the date of knowledge. Furthermore, there are no justifiable reasons assigned in the subject Interlocutory Application. Further, in the subject Interlocutory Application, there is no mention of loss of possession by respondent No.1/plaintiff and therefore, seeking amendment with regard to possession is not permissible. The Court below had mechanically allowed the subject Interlocutory Application. In the given circumstances, the Court below ought not have allowed the subject Interlocutory Application and

ultimately, prayed to set aside the impugned order. Learned counsel, in support of her submissions, relied on a decision of the Honourable Supreme Court in *South Konkan Distilleries and another v. Prabhakar Gajanan Naik and others*¹.

4. On the other hand, learned Senior Counsel appearing for respondent No.1/plaintiff would submit that the subject Suit was filed on 09.01.2003 seeking cancellation of Sale Deed, dated 22.04.1998, which was executed between respondent No.1/plaintiff and respondent No.2/defendant No.1. During pendency of the subject Suit, respondent No.2/defendant No.1 executed Sale Deeds, dated 18.01.2003, which is the subject matter of the subject Interlocutory Application. The relief of amendment sought in the subject Interlocutory Application is only a consequential one and *lis pendence* applies. Further, the facts narrated in *South Konkan Distilleries's case (supra)* are quite different from the facts and circumstances of the present case, wherein the dispute relates to recovery of damages/money. That cannot be applied to the instant case and ultimately, prayed to dismiss the Civil Revision Petition. The learned Senior Counsel, in support of his submissions, relied on a decision of this Court in *Syed Kaleemulla Quadri v. Yarasingh Vishnuvardhan and others*².

5. In view of the submissions made by both sides, the point that arises for determination is as follows:

¹ (2008) 14 SCC 632

² 2020 (1) ALD 56(TS)

“Whether the Court below is justified in allowing the amendment as sought in I.A.No.682 of 2011 in O.S.No.17 of 2003 on the file of XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, vide the impugned order, dated 02.09.2011?”

6. The admitted facts are that the subject Suit was filed on 09.01.2003 against defendant Nos.1 to 3 only for cancellation of Sale Deed, dated 22.04.1998. Thereafter, the revision petitioners/defendant Nos.4 and 5, having come to know about the pendency of the subject Suit, got impleaded themselves in the subject Suit vide order, dated 14.07.2003, passed in I.A.No.91 of 2003, contending that they have purchased the suit schedule property vide registered Sale Deeds, dated 18.01.2003, from respondent No.2/defendant No.1.

7. Learned counsel for the revision petitioners/defendant Nos.4 and 5 relied on paragraph No.24 of South Konkan Distilleries's case (supra 1), which reads as follows:

“Considering the facts of the case and the nature of amendment claimed and the principles laid down by this Court in *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.* (AIR 1957 SC 357) and other decisions of this Court, as referred to hereinafter, we are of the view that if a suit was filed on the amended claim, it was an admitted position that the said claim was barred by limitation, the question of allowing the amendment of the written statement and the counterclaim, in the facts and circumstances of the case, could not arise at all. Accordingly, the courts below were fully justified in rejecting the application for amendment of the written statement and the counterclaim.”

8. In the aforesaid decision, the dispute relates to amendment of pleadings to claim certain damages and the amendment was sought after the expiry of limitation. So, such an amendment was not permissible under law. Under these circumstances, the Honourable Apex Court was ultimately pleased to dismiss the amendment application. In the instant case, the relief originally sought in the subject Suit is to cancel the Sale Deed, dated 22.04.1998. The relief, which is now sought by way of amendment, is to cancel the subsequent Sale Deeds, dated 18.01.2003, which is a consequential relief. Further, the suit schedule property was transferred during pendency of the subject Suit vide Sale Deeds, dated 18.01.2003. Therefore, the aforesaid decision is not applicable to the facts of the present case.

9. In Syed Kaleemulla Quadri's case (supra 2), relied on by the learned Senior Counsel appearing for respondent No.1/plaintiff, this Court held that the power to grant amendment of pleadings is intended to serve needs of justice. Narrow or technical limitations should not be taken into consideration while allowing the amendment applications. When the amendment would not alter or change the nature of the Suit, it can be allowed at the fag-end of the trial of the Suit. Since similar situation has come up in the instant case, reliance can be placed over the said decision in coming to a conclusion in favour of respondent No.1/plaintiff.

10. The affidavit filed in support of the subject Interlocutory Application reveals that respondent No.1/plaintiff claims to be in possession of the suit schedule property and that the revision petitioners/defendant Nos.4 and 5 are interfering with its lawful ownership and possession and in the event of the trial Court coming to a conclusion that the revision petitioners/defendant Nos.4 and 5 are in possession of the suit schedule property, respondent No.1/plaintiff is entitled to claim the relief of possession in respect of the suit schedule property. Since certain allegations are made against the revision petitioners/defendant Nos.4 and 5 that they are forcibly trying to take possession of the suit schedule property, respondent No.1/plaintiff is seeking possession of the suit schedule property, in the event of the trial Court coming to a conclusion that respondent No.1/plaintiff is not in possession of the suit schedule property and that necessitated respondent No.1/plaintiff to make such a prayer in the plaint by way of amendment. Under these circumstances, such an amendment is permissible.

11. As far as the amendment sought with regard to seeking cancellation of Sale Deeds, dated 18.01.2003, is concerned, it is an ancillary/consequential relief to the relief sought in the original Suit. The serious contention raised on behalf of the revision petitioners/defendant Nos.4 and 5 that the Suit ought to have been filed within three years from the date of execution of the Sale Deeds, dated 18.01.2003, is concerned, the same can be adverted to by the Court below after framing an issue, if

required, on hearing both the sides. The substantial dispute between the parties to the litigation is with regard to the cancellation of Sale Deed, dated 22.04.1998, and consequential reliefs are subsequently proposed to be brought on record by way of amendment. The real controversy is required to be adjudicated. The Court below is justified in recording its finding relying on the judgment of the Honourable Supreme Court in Chander Kanta Bansal v. Rajinder Singh Anand³. Therefore, even if the subject Interlocutory Application is filed after commencement of trial, the relief sought in the subject Interlocutory Application cannot be denied. There is no legal infirmity in the impugned order to take a different view. Under these circumstances, the Civil Revision Petition is devoid of merit and is liable to be dismissed.

12. Accordingly, the Civil Revision Petition is dismissed.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed. There shall be no order as to costs.

January 23, 2020.
MD

Dr. SHAMEEM AKTHER, J

³ AIR 2008 SC 2234