

*** THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

+ Civil Revision Petition No.103 of 2021

% Date: 16th April, 2021

Between:

Kandibanda Venkateswarlu

... Petitioner/Plaintiff

AND

**\$ Katta Srinivas Reddy
and others.**

...Respondents/Defendants

! Counsel for the Petitioner : Sri Shaik Madar

^ Counsel for the Respondent No.1 : None appeared

^ Counsel for Respondent Nos.2 to 5 : Sri R. Sushanth Reddy

> HEAD NOTE:

> Cases referred

1. 2012 (5) ALD 56
2. (2018) 4 ALT 421
3. (2008) 14 SCC 632

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**CIVIL REVISION PETITION No.103 of 2021****ORDER:**

This revision, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff, aggrieved by the order dated 03.11.2020 passed in I.A.No.1041 of 2019 in O.S.No.29 of 2015 by the learned II Additional District Judge, Nalgonda District at Suryapet, wherein the subject Interlocutory Application filed by the revision petitioner/plaintiff under Order VI Rule 17 of CPC, seeking permission to amend the plaint, was dismissed.

2. Heard the learned counsel for the petitioner/plaintiff, learned counsel for the respondent Nos.2 to 5/defendant Nos.2 to 5 and perused the record.

3. In spite of service of notice on the respondent No.1/defendant No.1, there is no representation on his behalf.

4. The learned counsel for the revision petitioner/plaintiff would contend that the Court below erroneously dismissed the subject Interlocutory Application *vide* impugned order dated 03.11.2020, without following the principles laid down under Order VI Rule 17 of CPC. It is submitted that in the subject suit, during cross-examination of PW.1-petitioner/plaintiff, certain material facts with regard to the execution and registration of sale deeds by the respondent No.1/defendant No.1 have come up and that lead to filing of the subject amendment application seeking cancellation of those sale deeds and declaring them as null and void. The said amendment is within time. Further, there is no change in material

facts. It is also contended that the proposed amendment is necessary for proper adjudication of the subject matter of the suit and ultimately prayed to allow the revision petition as prayed for. In support of his contention, learned counsel relied upon the decision reported in ***Kovvuri Ramakrishna Reddy vs. Padala Satyanarayana Reddy***¹.

5. On the other hand, learned counsel for respondent Nos.2 to 5/defendant Nos.2 to 5 would submit that in Para 6 of the plaint, the petitioner/plaintiff specifically mentioned about the execution and registration of sale deeds by the respondent No.1/defendant No.1. Therefore, the contention of the revision petitioner/plaintiff that he came to know about the execution and registration of sale deeds only at the time of his cross-examination (P.W.1), is unsustainable. The revision petitioner ought to have been diligent in drafting the plaint and seek cancellation of sale deeds. The suit was filed on 16.09.2015, whereas the subject application seeking amendment was filed on 28.11.2019, which is beyond the period of limitation, as prescribed in Article 58 of the Limitation Act, 1963. The Court below rightly dismissed the subject Interlocutory Application *vide* impugned order dated 03.11.2020 and ultimately prayed to dismiss the revision petition. In support of his contentions, learned counsel relied upon the decisions reported in ***Ankam Govindamma v. Syed Shafeeullah***² and ***South Konkan Distilleries and another v. Prabhakar Gajanan Naik and others***³.

¹ 2012 (5) ALD 56

² (2018)4 ALT 421

³ (2008)14 SCC 632

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

“Whether the impugned order dated 03.11.2020 passed in I.A.No.1041 of 2019 in O.S.No.29 of 2015 by the learned II Additional District Judge, Nalgonda District at Suryapet, is liable to be set aside and consequently, the subject I.A.No.1041 of 2019 be allowed as prayed for?”

7. **POINT:-** As seen from the material placed on record, the revision petitioner/plaintiff filed the subject suit in O.S.No.29 of 2015 against the respondents/defendants, seeking specific performance of agreement of sale dated 21.09.2012 in respect of the suit schedule property. During pendency of the said suit, the revision petitioner/plaintiff filed the subject I.A.No.1041 of 2019 seeking amendment of the plaint. The Court below after hearing both sides, *vide* impugned order dated 03.11.2020, dismissed the subject application.

8. The main contention of the revision petitioner/plaintiff is that he came to know about the execution and registration of subject documents by the respondent No.1 only during his (PW.1) cross-examination and hence, he sought amendment of the plaint seeking cancellation of those sale deeds and to declare them as null and void. Whereas the contention of the respondent Nos.2 to 5/defendant Nos.2 to 5 is that the revision petitioner/plaintiff has knowledge about the execution and registration of subject documents by the respondent No.1, at the time of filing of the subject suit and the same was specifically mentioned in Para 6 of the Plaint.

9. Here, it is apt and appropriate to extract Order VI Rule 17 of CPC, which reads as follows:

Order VI Rule 17- Amendment of Pleadings:

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

10. As seen from the material placed on record, in Para 6 of the plaint, there is a specific mention with regard to the alienation, execution and registration of the subject documents by the respondent No.1/defendant No.1. It establishes that the revision petitioner/plaintiff has knowledge with regard to the execution and registration of the subject documents by respondent No.1. Even then, the revision petitioner/plaintiff did not seek the relief of cancellation of those documents in the subject suit.

11. In **Kovvuri Ramakrishna Reddy's** case (1 supra) cited by the learned counsel for the revision petitioner/plaintiff, it was held that under Order VI Rule 17 of the Code, the Court is vested with the discretion to allow either party to alter or amend his pleadings for the purpose of determining the real questions in controversy between the parties. However, under the proviso thereto, the application for amendment shall not be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite

of due diligence, the party could not have raised the matter before the commencement of trial. This proviso was added with a view to cut-down the delays and not to encourage the litigants who are either not diligent or who want to indulge in vexatious litigation for prolonging the suit proceedings. However, mere delay in filing such an application cannot constitute the sole ground for rejecting the application for amendment of the plaint. The provisions of Order VI Rule 17 of the Code are procedural, which, if interpreted in a pure literal sense, may some times cause grave injustice to the parties.

12. In **Ankam Govindamma's** case (2 supra), cited by the learned counsel for the respondent Nos.2 to 5/defendant Nos.2 to 5, it was held that the amendment petition filed after commencement of trial no doubt can be considered, provided, the petitioner therein could establish that inspite of exercising due diligence he could not file the petition before commencement of the trial and a separate suit on same cause of action for the same relief could be maintainable.

13. In the case of **South Konkan Distilleries's** case (3 supra), the Hon'ble Apex Court held that one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interest of justice. It is well settled that the Court must be

extremely liberal in granting the prayer for amendment, if the Court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the Court to allow an amendment if it is of the view that allowing of an amendment shall really subserve the ultimate cause of justice and avoid further litigation. In the instant case, the subject suit was filed on 16.09.2015. In Para 6 of the plaint, there is specific mention of execution and registration of subject sale documents. However, the revision petitioner/plaintiff did not seek cancellation of those sale documents. The written statement was filed on 29.10.2015 after due notice to the revision petitioner/plaintiff. In the written statement also there are full details of subject sale documents. The subject application seeking amendment to cancel the sale documents was filed on 28.11.2019 i.e, beyond the period of limitation of three(3) years as prescribed in Article 58 of Limitation Act, 1963. The revision petitioner/plaintiff ought to have claimed entire reliefs in one suit, which he did not do so, for the reasons best known to him. Moreover, the subject suit is for specific performance of agreement of sale, wherein the alternative relief to refund the amount of Rs.20,80,000/- paid by the revision petitioner/plaintiff to the defendant No.1, is also claimed. The decision in **Kovvuri Rama Krishna Reddy's** case (1 supra) relied upon by the learned counsel for the revision petitioner relates to a suit filed for declaration of title but in the instant case, the factual matrix are quite different. Admittedly, the subject amendment application

seeking cancellation of registered sale documents is made beyond the period of three(3) years from the date of knowledge of the existence of the documents. Generally, an application to amend the pleadings is required to be filed at any stage before the proceedings are finally terminated. However, there is a bar, the application for amendment shall not be allowed after trial has been commenced, unless the Court comes to conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial. The averments of the plaint as well as the written statement patently makes clear that the revision petitioner was not diligent and there is willful omission on the part of the revision petitioner in seeking the relief of cancellation of subject sale documents. The cardinal principles of law in allowing or rejecting an application for amendment of pleadings are that if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application, the Court has to decline to grant the amendment sought for. The Court must be extremely liberal in granting the prayer of amendment, if the Court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. The instant case is for specific performance of agreement of sale and the alternative relief claimed is to refund the amount paid by the plaintiff to the defendant No.1. In such an event, it cannot be construed that the revision petitioner/plaintiff will suffer irreparable loss or injury if his application to amend the pleadings is not allowed. The proposed amendment will not subserve the cause of justice in favour of the revision petitioner. There is patent omission on the part of the revision petitioner in not seeking the relief of

cancellation of subject documents in the suit filed at the first instance. The revision petitioner has consciously omitted to do so. Every suit shall include the whole of the claim, which the plaintiff is entitled to make in respect of the cause of action. Where a plaintiff omits to sue in respect of any portion of his claim, he shall not afterwards sue in respect of the portion so omitted. So in the instant case, there is omission on the part of the plaintiff in seeking the relief of cancellation of subject sale documents. After the expiry of the period of limitation he is not entitled to seek such a relief by amending the plaint. The trial Court while examining the contentions of both the parties, rightly held that the amendment application was filed belatedly and that there are no *bona fide* reasons to allow the subject application.

14. Here it is apt to mention that the scope of the High Court under Article 227 of the Constitution of India is very narrow. The High Court, in exercise of its power under Article 227 of the Constitution of India, should interfere with an order, only to keep the Tribunals and Courts subordinate to it *within the bounds of their authority* and to ensure that law is followed by such Tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them. Apart from the above, High Court can interfere in exercise of its power of superintendence, when there has been a patent perversity in the orders of the Tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. In the instant case, neither there is patent perversity in the order under challenge nor

the Court below travelled beyond its jurisdiction in passing the impugned order. The Court below discussed the material on record at length and rightly dismissed the subject Interlocutory Application, assigning reasons. There is nothing to take a different view. Under these circumstances, there is no irregularity or perversity in the impugned order dated 03.11.2020 passed by the Court below. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

15. In the result, the Civil Revision Petition is dismissed.

As a sequel, the miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 16.04.2021

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