

Chinnapareddy Subba Reddy Vs. Chinnapareddy Srinu and 2 Others

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Court : Andhra Pradesh

Decided On : Nov-01-2012

Judge : C.V.Nagarjuna Reddy

Appellant : Chinnapareddy Subba Reddy

Respondent : Chinnapareddy Srinu and 2 Others

Advocate for Def. : Mr. Nimmagadda Satyanarayana. Counsel, Mr. Idamakanti Kotireddy

Advocate for Pet/Ap. : Mrs. Nimmagadda Revathi

Judgement :

THE HONOURABLE SRI JUSTICE C.V.NAGARJUNA REDDY CIVIL REVISION
PETITION No.1773 o

01. 11-2012 Chinnapareddy Subba Reddy Chinnapareddy Srinu and 2 others
Counsel for Petitioner: Mrs.

Nimmagadda Revathi for Mr.

Nimmagadda Satyanarayana.

Counsel for Respondents: Mrs.

B.Prasanthi for Mr.

Kotireddy Idamakanti.

HEAD NOTE: CITATIONS: AIR 200.SC 336.ORDER: This Civil Revision Petition is filed against order dated 05.03.2012 in I.A.No.687 of 2011 in O.S.No.92 of 2009 on the file of the learned Senior Civil Judge, Darsi.

The petitioner filed the above-mentioned suit for permanent injunction restraining the respondents from interfering with his possession of the suit schedule property.

He also filed I.A.No.419 of 2009 seeking temporary injunction.

After enquiry, the said I.A.

was dismissed by the lower Court by holding that the petitioner was not in possession and enjoyment of the suit schedule property.

Thereafter, the petitioner filed I.A.No.687 of 2011 under Order VI Rule 17 of C.P.C., seeking amendment of the plaint by adding the alternative relief of recovery of possession.

This application was dismissed by the lower Court, by its order dated 05.03.2012, on the ground that as the petitioner has been all through pleading that he was in possession of the property, the application for amendment, if allowed, will change the nature and character of the suit.

Feeling aggrieved by the said order, the plaintiff filed this Revision Petition.

At the hearing, Mrs.

Nimmagadda Revathi, learned counsel for the petitioner, submitted that the Court below has committed a serious jurisdictional error in dismissing the petitioner's application on a totally misconceived premise that the application for amendment in a suit for permanent injunction claiming alternative relief of possession is not maintainable.

In support of her submission, she has placed reliance on the judgment of the Supreme Court in Sampath Kumar v.

Ayyakannu and another¹.

Opposing the above submission, Mrs.

B.

Prasanthi, learned counsel representing Mr.

Idamakanti Kotireddy, learned counsel for the respondents, submitted that the proposed amendment comes into conflict with the original pleadings of the petitioner and, therefore, the lower Court has rightly rejected the petitioner's application for amendment.

I have carefully considered the respective submissions of the learned counsel for the parties and perused the record.

While dismissing the application for amendment, the Court below has observed that the amendment sought by the petitioner is contrary to his pleadings and, therefore, such amendment is not permissible in law.

In Sampath Kumar (*supra*), the plaintiff initially filed the suit for permanent injunction claiming that he was in possession of the suit schedule property.

In the written statement, the defendant denied the plaintiff's plea of possession on the date of institution of the suit and had set up possession in himself.

Before the commencement of the trial, the plaintiff moved an application under Order VI Rule 17 CPC for amendment of the plaint, wherein he has pleaded that during the pendency of the suit, the defendant has forcibly dispossessed him.

He has, therefore, sought for amendment of the relief of declaration of title and consequential relief of delivery of possession.

The trial Court rejected the said application for amendment and its order was confirmed by the High Court in Revision.

While granting leave against the said orders, the Supreme Court has framed the following question: "The short question arising for decision is whether it is

permissible to convert through amendment a suit merely for permanent prohibitory injunction into suit for declaration of title and recovery of possession." In paragraph 7, the Supreme Court held as under: "In our opinion, the basic structure of the suit is not altered by the proposed amendment.

What is sought to be changed is the nature of relief sought for by the plaintiff.

In the opinion of the trial Court it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision.

We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit.

In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings." In my opinion, the above-referred judgment of the Supreme Court applies in all fours to the present case.

Even though the petitioner has asserted in his plaint that he was in possession of the property, obviously on account of the prima facie finding rendered by the lower Court in the application for injunction, he has sought for an alternative relief of recovery of possession.

There is no embargo on the petitioner claiming such an alternative plea.

Eventually, it is for him to establish whether he was in possession of the property, failing which he has to establish his right for recovery of possession.

As held by the Supreme Court in the above-mentioned judgment, by dismissing the applications for amendment of this nature, the parties will be driven to file a separate suit for recovery of possession and that would only lead to multiplicity of proceedings.

Unless the prayer sought to be made by way of amendment is barred by law, the Courts shall make a liberal approach in allowing the applications for amendment in

order to avoid multiplicity of proceedings.

It is not the pleaded case of the respondents that the amendment is barred by any law, such as the law of Limitation, or that any right vested in the respondents will be taken away by allowing such amendment.

For the above-mentioned reasons, I am of the opinion that the lower Court has committed a serious jurisdictional error in rejecting the petitioner's application for amendment.

The order of the lower Court is, accordingly, set aside and I.A.No.687 of 2011 is allowed.

The Civil Revision Petition is accordingly allowed.

As a sequel, CRPMP.No.2369 of 2012 of 2012 filed by the petitioner for interim relief is disposed of as infructuous.

_____ C.V.NAGARJUNA REDDY,J 01.11.2012

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