

T. Aswini Desai Vs. D. Koundinya (Died) by Lrs. and anr.

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Court : Andhra Pradesh

Decided On : Oct-27-2006

Reported in : 2007(2)ALD260; 2007(2)ALT600

Judge : G. Rohini, J.

Acts : [Specific Relief Act, 1963](#) - Sections 21, 22, 22(1) and 22(2); Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : CRP No. 5942 of 2004

Appellant : T. Aswini Desai

Respondent : D. Koundinya (Died) by Lrs. and anr.

Advocate for Def. : M. Lakshmana Sarma, Adv. for Respondent Nos. 2 to 6

Advocate for Pet/Ap. : Hari Sreedhar, Adv.

Disposition : Petition allowed

Judgement :

ORDER

G. Rohini, J.

1. This civil revision petition is preferred by the plaintiff against the order dated 6-10-2004 in I.A. No. 350 of 2004 in O.S. No. 652 of 1994 on the file of the Court of Principal Senior Civil Judge, Visakhapatnam, whereunder the application of the plaintiff under Order 6 Rule 17 of CPC for amendment of plaint was dismissed.

2. The facts, in brief, are as under:

The revision petitioner/plaintiff filed O.S. No. 652 of 1994 for special performance of agreement of sale dated 17-10-1989 allegedly executed by the 1st defendant in favour of her deceased husband agreeing to sell the suit schedule property, which is one of the four portions in house bearing Door No. 16-2-3, Visakhapatnam. It is the case of the plaintiff that by the date of the suit agreement she was already in possession of the suit schedule property as a tenant and under the suit agreement while acknowledging the receipt of Rs. 38,000/- as advance money it was agreed that the plaintiff need not pay the rents in respect of the house in her occupation and that no interest would be paid by the 1st defendant on the advance money. As per the said agreement the plaintiff stopped payment of rents. However, the 1st defendant evaded registration of sale deed. On the other hand, eviction proceedings were initiated by the 1st defendant's father claiming ownership to the house in question and alleging wilful default in payment of rents. Left with no alternative, the plaintiff filed the suit for specific performance of the agreement of sale dated 17-10-1989.

3. The 1st defendant filed a written statement denying the execution of the suit agreement and claiming that the suit property is the self-acquired property of his father-the 2nd defendant.

4. However, even before the commencement of the trial, the 1st defendant died and the Defendants 3 to 6 were brought on record as legal representatives of the deceased 1st defendant. After the issues were settled, during trial while the matter was coming up for the evidence of the defendants, the plaintiff filed I.A. No. 350 of 2004 under Order 6 Rule 17 of C.P.C. for amendment of the plaint by adding a further relief of partition of the properties shown in A-schedule into two equal shares and to allot one such share to the 1st defendant including the property agreed to be sold by the 1st defendant under the suit agreement. It was pleaded

that in view of the specific recital in the suit agreement that the suit schedule house was joint family property, she was advised to amend the plaint suitably by adding the additional relief of partition. It was further pleaded that the said relief could not be sought in the suit initially filed due to certain lapses on the part of the Counsel appearing for the plaintiff at that point of time. The said application was opposed by the 2nd defendant and the Court below by order dated 6-10-2004 dismissed the application holding that the proposed amendment, if allowed, would change the character of the suit. It was also observed that the application for amendment which was filed at a belated stage is impermissible. The said order is under challenge in this Civil Revision Petition.

5. I have heard the learned Counsel for both the parties and perused the material on record.

6. The learned Counsel for the petitioner contended that since the suit was still coming up for further evidence of the defendants the Court below ought not to have dismissed the petition on the ground of delay. The learned Counsel further contended that at any rate mere delay is not a ground for rejection of the application for amendment of pleadings. On merits, the learned Counsel contended that since admittedly in the suit agreement itself it was mentioned that the schedule property was ancestral property, the Court below was not justified in holding that the proposed amendment is illusory and it would change the character of the suit. The learned Counsel further contended that under Section 22(2) of the [Specific Relief Act, 1963](#) the relief of partition and separate possession can also be asked in addition to the decree for specific performance at any stage of the proceedings.

7. On the other hand, the learned Counsel for the respondents contended that the suit itself was misconceived since the order of eviction in respect of the very same property was already upheld by this Court. It is also contended that the proposed amendment which is contrary to the settled principles of law was rightly disallowed by the Court below.

8. At the outset, the prayer in the suit initially filed may be extracted hereunder:

The plaintiff therefore prays that the Hon'ble Court may be pleased to pass decree and judgment in favour of the plaintiff and against the defendants.

(a) To direct the defendants to execute and register a sale deed of the suit schedule properties in favour of the plaintiff i.e., Smt. T. Aswini Desai as per the sale agreement dated 17-10-1989 within the time that may be fixed by this Hon'ble Court itself to get the suit schedule premises be registered in favour of the plaintiff.

(b) Costs of the suit.

(c) And such other relief or reliefs as this Hon'ble Court deems fit and proper under the circumstances of the case.

By way of amendment of plaint, the following relief was sought:

(a) to direct the defendants to execute and register a sale deed in favour of the plaintiff for the B schedule property after partitioning the A schedule property into two equal shares allotting one such share to the 1st defendant; and

(b) in that share of the 1st defendant to include the B schedule property on the principles of equity and to deliver possession of the same.

Alternatively if the Hon'ble Court cannot direct specific performance of the suit agreement direct return of the advance amount of Rs. 38,000/- paid under suit agreement with 24% interest p.a. from the date of the suit agreement till realization of the said amount by the plaintiff.

9. The material on record shows that whereas the suit for specific performance was filed in the year 1994, the second defendant herein who is the father of the vendor under the suit agreement, filed a petition for eviction under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 in the year 1995 for eviction of the plaintiff from the suit schedule house and the same was ordered on 12-3-1997. The said order of eviction was confirmed by the Appellate Court on 20-6-2003 and CRP No. 3779 of 2003 filed by the petitioner herein was also dismissed by this Court by order dated 14-8-2003. The petitioner does not dispute the fact that by virtue of the order of eviction, she was already evicted from the suit

schedule house.

10. From the pleadings of both the parties, it is clear that by virtue of the proposed amendment the plaintiff did not plead any new facts but sought to add a further relief based on the very same set of facts which were earlier pleaded by her. In the plaint initially filed itself the plaintiff claimed that the 1st defendant executed the suit agreement stating that he was the heir apparent of the entire suit schedule premises inherited from his ancestors. The suit agreement allegedly executed by the 1st defendant also contains a recital that the house bearing No. 16-2-3 was their ancestral property. Both the Defendants 1 and 2 in their written statement denied the said plea claiming that the 2nd defendant is the absolute owner of the suit schedule property and it was his self-acquired property. Having regard to the rival claims, it is for the Court below to record a finding whether the 1st defendant had any saleable rights in the plaint schedule property and whether the suit agreement is valid and genuine. The plaintiff would be entitled to a decree for specific performance only in the event of the above issues being decided in her favour. However, as rightly submitted by the learned Counsel for the petitioner, in the absence of the relief of partition and separate possession even if it is established that the 1st defendant had a saleable interest in the property in question, the plaintiff cannot be granted any relief.

11. Section 22 of the [Specific Relief Act, 1963](#) entitles the plaintiff in a suit for specific performance of contract to ask for possession or partition and separate possession of the property in addition to the specific performance or any other relief including refund of earnest money in case his claim for specific performance is refused. Though under Sub-section (2), no such relief can be granted by the Court unless it has been specifically claimed, the proviso to Sub-section (2) enables the plaintiff to seek amendment of the plaint at any stage of the proceedings.

12. For proper appreciation, Section 22 of the [Specific Relief Act, 1963](#) may be extracted hereunder:

22. Power to grant relief for possession, partition, refund of earnest money, etc.:

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property, may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of Sub-section (1) shall be granted by the Court unless it has been specifically claimed:

PROVIDED that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.(3) The power of the Court to grant relief under clause (b) of Sub-section (1) shall be without prejudice to its powers to award compensation under Section 21.

13. In Babu Lal v. Hazari Lal Kishori Lal : [1982]3SCR94 , with regard to the scope and object of Section 22, the Supreme Court observed as under:

The section enacts that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, namely he may ask for possession, or for partition or for separate possession including the relief for specific performance. These reliefs he can claim, notwithstanding anything contained in the Code of Civil Procedure, 1908, to the contrary. Sub-section (2) of this section, however, specifically provides that these reliefs cannot be granted by the Court, unless they have been expressly claimed by the plaintiff in the suit. Sub-section (2) of the section recognized in clear terms the well-established rule of procedure that the Court should not entertain a claim of the plaintiff unless it has been specifically pleaded by the plaintiff and proved by him to be legally entitled to. The proviso to this Sub-section (2), however, says that where the plaintiff has not specifically claimed these reliefs in his plaint, in the initial stages of the suit, the

Court shall permit the plaintiff at any stage of the proceedings, to include one or more of the reliefs, mentioned above by means of an amendment of the plaint on such terms as it may deem proper. The only purpose of this newly enacted provision is to avoid multiplicity of suits and that the plaintiff may get appropriate relief without being hampered by procedural complications.

14. Having regard to the prohibition under Sub-section (2) of Section 22 of the Act to grant relief of possession or partition in a suit for specific performance of a contract unless it had been specifically claimed, the Court below is not justified in dismissing the application for amendment by adding the relief of partition.

15. As noted above, since the relief of partition is based on the same set of facts originally pleaded, it cannot be said that the proposed amendment either alters the character of the suit or introduces a new cause of action. On the other hand, it would avoid the multiplicity of proceedings as observed by the Supreme Court in the above decision. Such relief if added by way of amendment to plaint would not cause any prejudice to the defendants.

16. In view of the proviso to Sub-section (2) of Section 22 of the Specific Relief Act, which entitles the plaintiff to amend the plaint at any stage of the proceedings for adding the relief of possession or partition or any other relief mentioned under clauses (a) and (b) of Sub-section (1) of Section 22, the reasoning of the Court below that the application cannot be allowed at a belated stage appears to be erroneous. At any rate, since admittedly the suit is in the stage of trial and particularly the evidence of D.W. 1 is still going on, the Court below ought to have allowed the amendment as prayed for with regard to the reliefs of partition and separate possession and in the alternative refund of advance amount.

17. Accordingly, the order under revision is set aside and I.A. No. 350 of 2004 is allowed as prayed for.

18. Civil Revision Petition is accordingly allowed. No costs.