



2019:APHC:16657

HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND NINETEEN

PRSENT

THE HONOURABLE SRI JUSTICE M.VENKATA RAMANA
CIVIL REVISION PETITION NO: 414 OF 2019

Between:

1. VYRICHARLA EDUCATIONAL SOCIETY Kurupam village,
VIZIANAGARAM DISTRICT
2. Thotapalli surya Chandra Venkata Chakravarti Kothavalasa,
Parvathipuram, Municipality vizianagaram dist

...PETITIONER(S)

AND:

1. B KRISHNA MOHAN D.No. 63-2-154, Ward No. 46, Indira nagar, Colony,
Sriharipuram, VISAKHAPATNAM

...RESPONDENTS

Counsel for the Petitioner(s): HARINATH REDDY SOMA

Counsel for the Respondents: N ASHWANI KUMAR

The Court made the following: ORDER



2019:APHC:16657

THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

**FRIDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND NINETEEN**

PRESENT

THE HONOURABLE SRI JUSTICE M.VENKATA RAMANA

CRP Nos. 414, 427 & 438 of 2019



(Common CT in CRPS)

Between:

1. Vyricharla Educational Society, rep by its Secretary/Correspondent Kurupam Village, Vizianagaram District.
2. Thotapalli Surya Chandra Venkata Chakravarti, S/o Kannarao, Naidu Street Kothavalasa, Parvathipuram, Municipality Vizianagaram District.

Petitioners/Respondents/Defendants

AND

B. Krishna Mohan, S/o Venkateswarulu D.No. 63-2-154, Ward No. 46,
Indira Nagar, Colony, Sriharipuram, Visakhapatnam.

Respondent/Petitioner/Plaintiff

CRP No. 414 of 2019

Petition under Article 227 of the Constitution of India against the orders dated 25.10.2018 in IA.No. 83 of 2017 in O.S. No. 2 of 2016 on the file of the Senior Civil Judge, Parvathipuram, Vizianagaram District.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in OS.No. 2 of 2016 on the file of the Senior Civil Judge, Parvathipuram, Vizianagaram District, pending disposal of above Civil Revision Petition.

CRP No. 427 of 2019

Petition under Article 227 of the Constitution of India against the orders dated 25.10.2018 in IA.No. 84 of 2017 in O.S. No. 2 of 2016 on the file of the Senior Civil Judge, Parvathipuram, Vizianagaram District.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S.No. 2 of 2016 on the file of the Senior Civil Judge, Parvathipuram, Vizianagaram District, pending disposal of above Civil Revision Petition.



CRP No. 438 of 2019

Petition under Article 227 of the Constitution of India against the orders dated 25.10.2018 in I.A.No. 91 of 2017 in O.S. No. 31 of 2013 on the file of the Senior Civil Judge, Parvathipuram, Vizianagaram District.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S.No. 31 of 2013 on the file of the Senior Civil Judge, Parvathipuram, Vizianagaram District, pending disposal of above Civil Revision Petition.

Counsel For the Petitioners in all CRP's: SRI HARINATH REDDY SOMA

For the Respondent in all CRP's: SRI N. ASHWANI KUMAR

the Court made the following: COMMON ORDER



HONOURABLE SRI JUSTICE M. VENKATA RAMANA

C.R.P.Nos.414, 427 & 438 of 2019

COMMON ORDER:

The defendants in O.S.No.2 of 2016, preferred C.R.P.No.414 of 2019 and C.R.P.No.427 of 2019 against the orders of the learned Senior Civil Judge, Parvathipuram, Vizainagaram District, dated 25.10.2018 in I.A.Nos.83 and 84 of 2017 respectively.

2. The revision petitioners in C.R.P.No.438 of 2019 are the respondents/plaintiffs in I.A.No.91 of 2017 in O.S.No.31 of 2013 on the file of the learned Senior Civil Judge, Parvathipuram, Vizainagaram District. They preferred C.R.P.No.438 of 2019 against the orders in I.A.No.91 of 2017 in O.S.No.31 of 2013, dated 25.10.2018.

3. The parties to O.S.No.2 of 2016 and O.S.No.31 of 2013 on the file of the learned Senior Civil Judge, Parvathipuram, are one and the same. Whereas the respondent in C.R.P.Nos.414 & 427 of 2019 is the plaintiff in O.S.No.2 of 2016 and the revision petitioners are the defendants in the above suit. The defendant in O.S.No.31 of 2013 on the file of the above Court is the respondent in C.R.P.No.438 of 2019. The dispute in both the suits is in respect of 89 cents of land (hereinafter referred to as 'the suit land') in Sy.Nos.174/5, 174/6 and 174/7 admeasuring Ac.0.12, Ac.0.14 and Ac.0.63 cents respectively, within the specified boundaries.

4. Since the parties to all these revision petitions and property in dispute in the suits being same and in as much as the contentions are advanced on behalf of the parties to these revision petitions in all these matters together, they are being disposed of by this common order.



5. For convenience, the parties as arrayed in O.S.No.2 of 2016 in the trial Court shall be referred to hereinafter.

6. Initially the plaintiff in O.S.No.2 of 2016 filed a suit for permanent injunction on the file of the learned Principal Junior Civil Judge, Parvathipuram in O.S.No.80 of 2013. However, in view of the orders of learned Principal District Judge, Vizainagaram in Transfer O.P.No.188 of 2015, dated 08.12.2015 the above suit was withdrawn from the file of the learned Principal Junior Civil Judge, Parvathipuram and was transferred to the Court of the learned Senior Civil Judge, Parvathipuram, where it was renumbered as O.S.No.2 of 2016. The orders of the learned Principal District Judge, Vizainagaram, in T.O.P.No.188 of 2015 directed that the above suit be tried along with O.P.No.31 of 2013, which was pending on the file of the learned Senior Civil Judge, Parvathipuram.

7. The plaintiff in O.S.No.2 of 2016 instituted the suit for relief of permanent injunction against the defendants therein to restrain them from interfering with his peaceful possession and enjoyment of the property in dispute, i.e., the suit land described above.

8. The defendants in O.S.No.2 of 2016 are the plaintiffs in O.S.No.31 of 2013 on the file of the learned Senior Civil Judge, Parvathipuram. They instituted the above suit against the defendant i.e., the plaintiff in O.S.No.2 of 2016 to declare that they are the absolute owners of the suit land and for consequential permanent injunction restraining the defendant in any manner interfering with their peaceful possession and enjoyment of the same, including intended construction of building in the suit land.

9. As seen from the case set up by the plaintiff in the plaint, in O.S.No.2 of 2016, he claimed that he had purchased the suit land under a



registered agreement for sale-cum-GPA, from Sri Vedulapalli Ramakrishna, for a valuable consideration of Rs.1,56,000/-, on 23.06.2005 and that he has been in peaceful possession and enjoyment of the suit land since he was put in possession of the land by the original owner Sri Vedulapalli Ramakrishna. He further claimed that the defendants attempted to interfere with his possession and enjoyment of the land claiming that they purchased the suit land under registered sale deed dated 16.04.2011 from Sri Vedulapalli Ramakrishna. On such premise and among other averments in the plaint, he sought such relief. The defendants opposed the claim of the plaintiff in O.S.No.2 of 2016 as well as the plaintiffs in O.S.No.31 of 2013.

10. As seen from the orders under revision in all these matters, in O.S.No.2 of 2016 the plaintiff filed an affidavit in examination in chief and the documents are yet to be marked through him. In the course of hearing these revision petitions, it is informal by the learned counsel for all the parties that trial is yet to commence in both the suits.

11. I.A.No.83 of 2017 in O.S.No.2 of 2016 was filed by the plaintiff under Order I Rule 10 C.P.C., to add Sri Vedulapalli Ramakrishna, who is the predecessor in title of the suit land claimed by both the parties, and one Sri Tatineni Saketi Ramachowdary, who is stated to be a purchaser of the suit land from the plaintiff during the pendency of the suit, under a registered sale deed dated 07.05.2016.

12. I.A.No.84 of 2017 was filed by the plaintiff in O.S.No.2 of 2016 under Order VI Rule 17 C.P.C., read with Section 151 C.P.C to amend the plaint as set out therein for relief of declaration to the effect that the sale deed dated 16.04.2011 claimed by the defendants, as if executed by Sri Vedulapalli Ramakrishna, is nominal and sham, and the same is liable to



be cancelled, or in the alternative to direct both the defendants and Sri Vedulapalli Ramakrishna to execute a regular registered sale deed in his favour or in the name of Sri Tatineni Saketi Ramachowdary, as suggested by him in terms of the registered agreement for sale cum GPA dated 18.07.2008 and to remove unauthorised constructions made in the suit land, directing eviction of defendants therefrom.

13. In both these petitions it was the contention of the plaintiff in O.S.No.2 of 2016 that the advocate engaged by him earlier did not bring out the material facts in spite of his instructions and to state that he was in possession and enjoyment of the suit land under part performance of contract between him and the original owner Sri Vedulapalli Ramakrishna and that after changing his advocate he has been advised to seek these reliefs. It was also his contention in those petitions that there were certain subsequent events including the alleged claim of the defendants as to the purchase of the suit land from the very same vendor, who had raised certain constructions therein, under registered sale deed dated 16.04.2011. It was also his contention that Sri Vedulapalli Ramakrishna being the owner of the suit land and the purchaser of the same from him viz., Sri Tatineni Saketi Ramachowdary are necessary parties to the suit, and therefore, they are required to be impleaded as party defendants, viz., 3rd defendant and 4th defendant. He further claimed that amending the plaint to the above effect, will not cause any prejudice to the defendants nor the scope of the suit gets changed nor he is trying to introduce any new case. Thus stating, the plaintiff requested to allow both these petitions.

14. The main objection of both the defendants, to these petitions, in their counters, which have identical averments, was that the reason set



out by the plaintiff that there was improper legal advice, when he instituted the suit originally and that there was proper advice to him upon changing his advocate, is false and incorrect. Another objection raised in these counters was that the plaintiff is aware of the claim of the defendants in O.S.No.2 of 2016 that they purchased the suit land under registered sale deed dated 16.04.2011 from Sri Vedulapalli Ramakrishna; since the plaintiff himself has stated that the defendants filed caveat petition in COP 20 of 2013 referring to this sale deed in their favour; that on account of the proposed amendment, there is complete change in the frame of the suit and that it is based on a different cause of action than the originally stated by the plaintiff. Another objection raised on their behalf in these counters was that the plaintiff did not have subsisting interest to the suit land, in as much as, he himself has come out that he had sold away the same to Sri Tatineni Saketi Ramachowdary under a registered sale deed dated 07.05.2016. According to the defendants since the proposed amendment, seeking the relief of specific performance, though the suit was initially instituted for injunction simpliciter, completely alters the nature of the suit and when the alleged executant of the agreement for sale in favour of the plaintiff is not a party to the suit, no such relief can be sought by the plaintiff against the defendants. Claiming that they are *bona fide* purchasers for value of the suit land and without there being any notice of previous alienations the proposed amendment was sought only to meet their contentions raised in the written statement, it is pointed out that the plaintiff could have come up with additional pleadings, if so required, in terms of Order VIII Rule 9 C.P.C, without resorting to Order VI Rule 17 C.P.C. Thus these two petitions were opposed by the defendants.



15. In I.A.No.91 of 2017 in O.S.No.31 of 2013, concerned to C.R.P.No.438 of 2019, the same reasons were assigned by the defendant, who is none other than the plaintiff in O.S.No.2 of 2016, in the proposed additional written statement under Order VIII Rule 9 C.P.C. The plaintiffs in O.S.No.31 of 2013 in their counter to I.A.No.91 of 2017 stated that the defendant did not have subsisting interest in the suit land since he sold the suit land under a registered sale deed dated 07.05.2016 to Sri Tatineni Saketi Ramachowdary, nor can they claim part performance of contract in terms of the alleged agreement for sale in their favour from Sri Vedulapalli Ramakrishna, who tried to introduce completely a new case in derogation of the original case set up by them in the written statement, contending similarly as stated in the two petitions referred to above in O.S.No.2 of 2016. It was further stated that changing the advocate is not a ground to file additional pleadings and presenting altogether a new case departing from the original written statement, is impermissible. Thus they opposed I.A.No.91 of 2017.

16. Learned Senior Civil Judge, Parvathipuram allowed all the three petitions by the orders under revision.

17. On behalf of the defendants, who are the revision petitioners in C.R.P.Nos/414 & 427 pf 2019, the orders under revision are seriously questioned on the premise that the parties sought to be added are not necessary or proper parties to the suit in O.S.No.2 of 2016 and the proposed amendment is completely impermissible which alters the very nature of the suit on a different cause of action causing any amount of prejudice to the defendants. Similarly, contending that permitting the plaintiff to file additional written statement as defendant in O.S.No.31 of



2013 on such grounds set up on a new cause, being improper, it is requested to allow all these revision petitions.

18. On behalf of the plaintiff, while supporting the orders under revision, it is contended that having regard to the nature of the suit filed initially for permanent injunction, in given circumstances of the case basing on subsequent events, seeking such reliefs as stated in the proposed amendments is just and proper. It is further contended for the plaintiff that addition of parties is for just determination of the matter in dispute and in as much as, both the parties are tracing their right title and interest from Sri Vedulapalli Ramakrishna it is proper that he be brought on record as a necessary party. It is further contended that addition of the purchaser from the plaintiff during the pendency of the suit as a party defendant, is in the interest of justice and whereby the defendants do not suffer any prejudice. Similarly, supporting filing additional written statement with similar pleas, as set out in the amendment made in O.S.No.2 of 2016, it is pointed out for the plaintiff that in the circumstances of the case, no interference is warranted when the learned trial Judge has chosen to exercise his discretion in right perspective. Thus, on behalf of the plaintiff the orders under revision are sought to be supported.

19. Now the following points arise for determination:

1. Whether the plaintiff be permitted to amend the plaint in O.S.No.2 of 2016 the manner sought and the reasons assigned in respect thereof are just and proper?
2. Whether the proposed defendants to the suit in O.S.No.2 of 2016 are necessary or proper parties and can be brought on record having regard to the nature of the suit?



3. Whether the additional written statement sought to be filed by the plaintiff, as defendant in O.S.No.31 of 2013 has to be permitted?

Point No.1:

20. The plaintiff, who filed the suit initially to grant the relief of permanent injunction against the defendants, intends to seek the reliefs as set out in paragraph 12 of this order, pointing out certain subsequent events and in an attempt to enforce his alleged right under the contract covered by registered agreement for sale cum GPA dated 18.07.2008 alleged to have had been executed by Sri Vedulapalli Ramakrishna agreeing to sell away the suit land. The contours for consideration of the petition under Order VI Rule 17 C.P.C., are now well settled that in permissible circumstances when material on record warrants discretion in respect thereof has to be exercised liberally in favour of the party, who is requesting such relief. Another parameter to be borne in mind in terms of Order VI Rule 17 C.P.C., is that the trial should not have commenced before permitting such an amendment and even in the circumstances where trial has already commenced, the party, who applied for such amendment, should make out that despite due diligence he could not request for the same earlier, in the course of suit proceedings.

21. In this context on behalf of the respondents reliance is placed in **Sampath Kumar v. Ayyakannu**¹ and rightly. It was observed in this ruling with reference to application of Order VI Rule 17 C.P.C., in paragraphs 9 and 10, as under:

9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such

¹ AIR 2002 SC 3369



amendments as are directed towards putting-forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observation in Siddalingamma and Anr. v. Mamtha Shenoy, AIR 2001 SC 2896.

22. It is strenuously contended for the defendants touching upon the merits of the proposed amendment pointing out the change in the nature of cause sought to be set out by the plaintiff. But as rightly contended for the plaintiff, merits of the proposed amendment cannot be considered at this stage nor can be judged. Thus all the contentions sought to be advanced on behalf of the defendants in this context, cannot stand.

23. The contention on behalf of the defendants is that the proposed parties are not parties to the alleged agreement for sale cum GPA said to have been executed by Sri Vedulapalli Ramakrishna in favour of the plaintiff and therefore, this alleged contract is not binding on them. Even this contention cannot stand not only for the reason that it pertains to the merits of the proposed amendment but also for the reason that the plaintiff has already filed a petition under Order I Rule 10 C.P.C., in



I.A.No.83 of 2017 to add not only Sri Vedulapalli Ramakrishna but also the purchaser from him, viz., Sri Tatineni Saketi Ramachaowdary. In such an event when Sri Vedulapalli Ramakrishna is sought to be added as third defendant to the suit, who according to the plaintiff had executed the above agreement for sale cum GPA, having regard to the fact that the defendants are also claiming their right title and interest to the suit land through Sri Vedulapalli Ramakrishna himself, they stand in the position as purchasers of this property during subsistence of alleged contract between the plaintiff and Sri Vedulapalli Ramakrishna. When their specific claim not only in O.S.No.2 of 2016 but also in O.S.No.31 of 2013 that they purchased the suit land under registered sale deed dated 16.04.2011, proposing such amendment of the pleadings in the plaint and also the relief in O.S.No.2 of 2016 by the plaintiff is just and appropriate. Merely because the plaintiff has sought such relief for specific performance long after the date of registered agreement for sale cum GPA in his favour, viz., 23.06.2005 it is not a factor by itself to consider the objections raised on behalf of the defendants. In this fact ground, even otherwise, such delay can be addressed by imposing terms, which learned trial Judge, did, in this case.

24. The contention of the plaintiff that on a better legal advice from his present advocate he had chosen to file this petition though canvassed on behalf of the defendants being an improper reason, it cannot stand. When joint trial is ordered in O.S.No.2 of 2016 and O.S.No.31 of 2013 wherein both the parties are expected to substantiate their respective cases it is always desirable that there is a comprehensive and complete adjudication of the matters in controversy. Therefore, in the light of these circumstances, all the contentions advanced on behalf of the defendants



in these revision petitions against ordering the proposed amendments sought by the plaintiff have to be rejected.

25. However, on behalf of the defendants **E. Mallaiah v. M. Surana**² is relied on in support of their contention. In this ruling, the conditions required to be satisfied, when an amendment is permitted basing on subsequent events, are stated as under:

- (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;
- (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and
- (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

26. Even on this score, the contention on behalf of the defendants cannot stand in as much as the reliefs proposed by way of this amendment by the plaintiff, in a given facts and circumstances of the case, cannot be deemed inappropriate. They are within the purview of the relief, which the trial Court can consider. In fact, having regard to comprehensive claim now projected by the plaintiff by this amendment, possibility of shortening the litigation avoiding multiplicity of proceedings is very much foreseen. In as much as the defendants are aware of the nature of the claim set forth by the plaintiff, it cannot be stated that they stand to surprise by the proposed amendment.

27. Another ruling relied on for the defendants, in this context is **K. Vinayak Reddy and Anr. V. Shriram Chits Limited, Branch-I, Nizamabad**³. It was altogether a different case on facts where the proposed amendment was not permitted, in as much as the proposed

² 2003 (4) ALD 844

³ 2006 (4) ALD 205



amendment was projecting altogether a different case departing from fundamental frame of the suit. Therefore, even this ruling did not assist the contentions of the defendants.

28. Therefore, there is no reason to defer with the view of the learned Senior Civil Judge, Parvathipuram in permitting amendment in I.A.No.84 of 2017 in O.S.No.2 of 2016 by his order dated 25.10.2018. Thus this point is answered holding that the reasons assigned by the plaintiff for the proposed amendment are appropriate and acceptable, rejecting the contentions on behalf of the defendants.

Point No.2:

29. Sri Vedulappali Ramakrishna admittedly is the original owner from whom, not only the plaintiff but also the defendants are claiming right title and interest the suit land. Having regard to the nature of the amendments proposed in the plaint by the plaintiff, he is a necessary party and his presence is required for complete adjudication of the matter and the dispute in issue. More so, when he is claimed to be an executant of registered agreement for sale cum GPA dated 23.06.2005, his addition as a party to the suit is but appropriate.

30. Addition of Sri Tatineni Saketi Ramchowdary as defendant No.4 to O.S.No.2 of 2016 by the plaintiff, is on account of the sale of this property on 07.05.2016 under a registered sale deed. Admittedly it was during the pendency of the suit. The contention on behalf of the defendants is that in view of this situation, the plaintiff did not have subsisting interest in the suit property and all the petitions filed by him in the suit cannot lie. Nonetheless, the plaintiff has chosen to make the subsequent purchaser from him as defendant No.4. In order to safeguard



the alleged interest, which his purchaser has in the suit claim as sought to be projected by the plaintiff, his presence in the suit as one of the defendants as a proper party, be deemed proper. His presence in the suit as such, cannot be deemed an obstruction nor can it be treated objectionable.

31. It is further to be noted that it is not as though the defendants did not know about the alleged sale in favour of Sri Tatineni Saketi Ramchowdary by the plaintiff. As seen from the material on record they have made him one of the defendants to O.S.No.31 of 2013 filing a petition in I.A.No.59 of 2017 under Order I Rule 10 C.P.C. Apparently this petition was allowed and he was added as a party defendant to O.S.No.31 of 2013. When essentially the dispute in both the suits is in respect of the suit land where the nature of the claims projected by the plaintiff and the defendants, are one and the same, the objection sought to be raised now on behalf of the defendants about his presence in O.S.No.2 of 2016, cannot stand.

32. In **Mumbai International Airport Pvt. Ltd. V. Regency Convention Centre & Hotels Pvt. Ltd., and others**⁴ in the context of application of Order I Rule 10 C.P.C., it was observed in paragraph 8 as under:

"The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"Court may strike out or add parties.

⁴ (2010) 7 SCC 417



(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made."

33. It was further observed in paragraph 12 of this ruling in the same context, as under:

"12. Let us consider the scope and ambit of Order I of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice. This Court in *Ramji Dayawala & Sons (P) Ltd. vs. Invest Import - 1981 (1) SCC 80*, reiterated the classic definition of 'discretion' by Lord Mansfield in *R. vs. Wilkes - 1770 (98) ER 327*, that 'discretion' when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, 'but legal and regular'. We may now give some illustrations regarding exercise of discretion under the said Sub-



Rule. 12.1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order I. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

12.2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.

12.3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.

12.4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co-owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances



and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.”

34. Having regard to the effect and impact in application of Order I Rule 10 C.P.C explained in the above ruling, when the plaintiff being *dominus litis* has chosen to add defendants 3 and 4 to the suit and for the reasons stated supra which make out the necessity of addition of these proposed defendants to the suit, which stand even to the advantage of the defendants, all the contentions raised on their behalf in this regard have to be rejected. Thus the claim of the plaintiff in this respect has to be accepted. The reasons assigned by the learned Senior Civil Judge, Parvathipuram in I.A.No.83 of 2017 in O.S.No.2 of 2016 in the order dated 25.10.2018 in this context, have to be confirmed. Thus this point is answered in favour of the plaintiff.

Point No.3:

35. In terms of Order VIII Rule 9 C.P.C., additional pleadings can be raised by a party to the suit, be it the plaintiff or the defendant. In order to support his defence, when the plaintiff has chosen to file an additional written statement in O.S.No.31 of 2013, objections raised on behalf of the defendants to receive the same, cannot stand. It cannot be stated that by the averments in the additional written statement, the plaintiff has made a departure from his defence in the suit. Even otherwise, considering the fact that O.S.No.2 of 2016 and O.S.No.31 of 2013 are being tried together, where the parties have to prove their respective cases, by adducing appropriate evidence, the proposed additional written statement cannot cause to any prejudice to the defendants. Added to it, the proposed amendment of the plaint in



O.S.No.2 of 2016 is to the very same effect as is pleaded in the additional written statement.

36. Even otherwise, in all the situations it is not as though the parties are precluded from filing subsequent pleadings either by means of rejoinder by the plaintiff in order to controvert the case of the defendants or in order to meet the case sought to be projected by the plaintiff by the proposed amendments, by filing additional written statement by the defendants. Therefore, even on this score it cannot be stated that the objections raised by the defendants for receiving additional written statement as per the orders in I.A.No.91 of 2017 in O.S.,No.31 of 2013, are proper.

37. On behalf of the plaintiff a judgment of this Court in **P. Hajiram bi and ors. V. M. Ismail Khan and ors.**⁵ is relied on. In this ruling in para-9, it was observed:

"The discretion of the Court to allow subsequent pleadings under Rule 9 of Order VIII C.P.C., is wider than the discretion given to it by Rule 17 of Order VI C.P.C. while in both the events, the parties have to necessarily show diligence, in cases, falling under Rule 9 of Order VIII C.P.C., the Court can show more latitude towards the party in allowing subsequent pleadings by the defendants."

When the learned Trial Judge, exercised discretion to receive additional written statement, it cannot be found fault with, in the backdrop of the circumstances of these cases. Therefore, this point is also answered against the defendants.

38. Thus the grounds urged on behalf of the defendants in these revision petitions cannot stand on any count. They are at liberty to file a rejoinder in O.S.No.31 of 2013 and additional written statement in O.S.No.2 of 2016. Similarly, the proposed parties, who shall be added in

⁵ 2012 (3) A.L.D 669

consequence of allowing I.A.No.83 of 2017 in O.S.No.2 of 2016 shall also given liberty to file written statement if they chose to appear and contest the suit.

39. Therefore, all these three civil revision petitions shall be dismissed being without merit.

40. In the result C.R.P.Nos.414, 427 and 438 of 2019 are dismissed confirming the orders passed by the learned Senior Civil Judge, Parvathipuram, Vizainagaram District in I.A.Nos.83, 84 of 2017 in O.S.No.2 of 2016 and I.A.No.91 of 2017 in O.S.No.31 of 2013 respectively. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Sd/- V. SUDHA
ASSISTANT REGISTRAR

V. Sudha

//TRUE COPY//

SECTION OFFICER

One Fair Copy to Hon'ble Sri Justice M. Venkata Ramana
(for his Lordship's kind Perusal).

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S: The section officer. V.R. Section, High court of A.P. Amaravathi



2019:APHC:16657



HIGH COURT

DATED:28/06/2019

ORDER

CRP.Nos.414, 427 & 438 of 2019

all
Dismissing the CRPs

RA
17
25/7/19