

HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE FOURTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 2205 OF 2015

Between:

1. KALLAM MANGAMMA W/o Late Brahma Reddy
Indian Hindu, aged about 66 years,
House Wife and Properties,
R/o Bodapadu, Nunna Village,
Vijayawada Rural Mandal, Krishn District

...PETITIONER(S)

AND:

1. BONTHU LAKSHMI SARADA & 3 OTHERS D/o Bonthu Rami Reddy,
W/o M.Praveen Kumar Reddy,
Indian Hindu, aged about 38 years,
R/o St. Brides Court, Ingleby Barwick,
Stockton-on-Trees,
TS 17 5 HF, Cleveland, UK.
2. Bonthu Neeraj D/o Rami Reddy
W/o Srikanth Reddy Plawai
Indian Hindu, aged about 37 years,
R/o Road No. 5, Plot No. 22A, Flat No. 3, Sri Padmavathi Nilayam,
Jubilee Hills, Hyderabad.
3. Bonthu Prasanthi D/o Bonthu Rami Reddy, W/o T.Sruthi Sagar Reddy,
Indian Hindu, Aged about 32 years, R/o 10638 S.langley St. Olathe, KS
66061, USA,
(Respondents 1 to 3 Rep.by through
Their GPA Holder i.e. 2nd respondent)
4. Bonthu Rami Reddy S/o Madhusudhan Reddy, Indian, Hindu, aged 63
years, Business
And Properties, R/o D.No. 252, Prasanthi Nilayam P2, Road No.2,
Banjara Hills, Hyderabad.

...RESPONDENTS

Counsel for the Petitioner(s): YALLABANDI RAMATIRTHA

Counsel for the Respondents: D VENKATA RAMANA REDDY

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.2205 OF 2015

Between:

1. Kallam Mangamma (Died), W/o. Late Brahma Reddy, Hindu, 66 years, Housewife & Properties, R/o.Bodapadu, Nunna Village, Vijayawada Rural Mandal, Krishna District. **(Respondent No.1/Defendant No.1)**
2. Bhemavarapu Anuradha, W/o. B.Venkat Reddy, D/o. Late Kallam Mangamma, Hindu, 48 years, Housewife, R/o. H.No.1-36, Bodhan Mandal, Atchampalli (Rural), Nizamabad, Telangana State-503180.

(LR. of the deceased petitioner No.1 was brought on record as per Order, dated 10.11.2020 *vide* CRPMP No.6668 of 2015 in CRP No.2205 of 2015)

... Petitioners

Versus

1. Bonthu Lakshmi Sarada, D/o. Bonthu Rami Reddy, W/o.M.Praveen Kumar Reddy, Indian & Hindu, 38 years, R/o.St.Brides Court, Ingleby Barwick, Stockton-on-Trees, TS 17 5 HF, Cleveland, UK.
2. Bonthu Neeraj, D/o. Rami Reddy, W/o. Srikanth Reddy Plawai, Hindu, 37 years, R/o. Road No.5, Plot No.22A, Flat No.3, Sri Padmavathi Nilayam, Jubilee Hills, Hyderabad.
3. Bonthu Prasanthi, D/o. Bonthu Rami Reddy, W/o.T.Sruthi Sagar Reddy, Indian Hindu, 32 years, R/o. 10638 S.Langley St. Olathe, KS 66061, USA,
(Respondent Nos.1 to 3 represented through their GPA Holder i.e., 2nd respondent) **(Respondents/Plaintiffs)**
4. Bonthu Rami Reddy, S/o. Madhusudhana Reddy, Hindu, 63 years, Business & Properties, R/o.D.No.252, Prasanthi Nilayam, P2, Road No.2, Banjara Hills, Hyderabad. **(Respondent No.2/Defendant No.2)**

... Respondents

* * * * *

DATE OF ORDER PRONOUNCED : 04.04.2023.

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local Newspapers
may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
fair copy of the Order? Yes/No

B.V.L.N.CHAKRAVARTHI, J

*** HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CIVIL REVISION PETITION NO.2205 OF 2015

% 04.04.2023

Between:

1. Kallam Mangamma (Died), W/o. Late Brahma Reddy, Hindu, 66 years, Housewife & Properties, R/o.Bodapadu, Nunna Village, Vijayawada Rural Mandal, Krishna District. **(Respondent No.1/Defendant No.1)**
2. Bhemavarapu Anuradha, W/o. B.Venkat Reddy, D/o. Late Kallam Mangamma, Hindu, 48 years, Housewife, R/o. H.No.1-36, Bodhan Mandal, Atchampalli (Rural), Nizamabad, Telangana State-503180.

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3. Bonthu Prasanthi, D/o. Bonthu Rami Reddy, W/o.T.Sruthi Sagar Reddy, Indian Hindu, 32 years, R/o. 10638 S.Langley St. Olathe, KS 66061, USA,

(Respondent Nos.1 to 3 represented through their GPA Holder i.e., 2nd respondent) **(Respondents/Plaintiffs)**
4. Bonthu Rami Reddy, S/o. Madhusudhana Reddy, Hindu, 63 years, Business & Properties, R/o.D.No.252, Prasanthi Nilayam, P2, Road No.2, Banjara Hills, Hyderabad. **(Respondent No.2/Defendant No.2)**

... Respondents

**! Counsel for the Revision
-petitioners**

: Sri Yallabandi Ramatirtha

**^ Counsel for the
Respondent Nos.1 to 3/
Respondents/Plaintiffs**

: Sri M.Chalapati Rao

**^ Counsel for the
Respondent No.4/D.2**

: Sri D.Venkata Ramana Reddy

< Gist:

> Head Note:

? Cases referred:

1. AIR 1996 Supreme Court 2358.

2. (2004) 6 SCC 415.

This Court made the following:

THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTI

CIVIL REVISION PETITION NO.2205 of 2015

O R D E R:

Heard Sri Yallabandi Ramatirtha, learned counsel for revision-petitioner and Sri M.Chalapati Rao, learned counsel for respondent Nos.1 to 3.

2. The contention of the revision-petitioner is that the property under dispute was bequeathed to her by her father late Madhusudhana Reddy and the Gift Deeds executed in the year 1981 prior to the partition between Madhusudhana Reddy and his son i.e., defendant No.2 in the suit. Therefore, the revision-petitioner acquires right by bar of limitation and the same is sought to be taken away by amending of the pleading, it would cause prejudice to the right of the revision-petitioner and such an amendment would defeat the accrued right in favour of the revision-petitioner.

3. The contention of the respondents/plaintiffs is that they filed the suit for Declaration that plaint 'A' and 'B' schedule properties are ancestral properties of their grandfather Madhusudhana Reddy and their father i.e., defendant No.2 in the suit and therefore, their paternal grandfather cannot alienate the

ancestral property affecting the rights of other coparcener and hence, they filed the suit for Declaration that plaint schedule properties are ancestral properties and for partition of the properties. The further contention of the respondents is that, the revision-petitioner, who is defendant No.1 in the suit, filed written statement contending that Madhusudhana Reddy bequeathed the plaint schedule properties in favour of the defendant No.1 i.e., his daughter under Gift Deeds executed in the year 198; therefore, the plaintiffs were advised to amend the plaint seeking relief of 'Declaration' that the alleged Gift Deeds executed by Madhusudhana Reddy are not binding on the plaintiffs to the extent of his share.

4. The learned Trial Judge 'Allowed' the application filed by the plaintiffs for amendment of the plaint. Assailing the said Order, the defendant No.1/revision-petitioner filed the present revision.

5. In the light of above rival contentions, the point that would arise in the revision-petition is as under: -

“Whether the Trial Court committed any irregularity in the Order, dated 13.03.2015 passed in I.A.No.491 of 2014 in O.S.No.344 of 2012?”

6. **POINT**: -

The learned counsel for the revision-petitioner would submit that the revision-petitioner/defendant No.1, who is the daughter of Madhusudhana Reddy and sister of father of the plaintiffs in the suit, acquires right over the plaint schedule properties by bar of Limitation in view of the Gift Deeds executed in her favour in the year 1981 by late Madhusudhana Reddy before the partition between Madhusudhana Reddy and father of the plaintiffs in the suit i.e., Defendant No.2; and in the said circumstances, the plaintiffs attempt to take away their right by way of amendment of the pleading would defeat her right; hence, the Trial Court committed material irregularity by permitting the respondents No.1 to 3/plaintiff Nos.1 to 3 to amend the plaint seeking the relief to declare that the Gift Deed executed by late Madhusudhana Reddy in the year 1981, is not binding on the plaintiffs to the extent of their share in the property.

7. The learned counsel for the respondent Nos.1 to 3/plaintiffs would submit that the contention of the plaintiffs is that the disputed property i.e., plaint 'A' and 'B' schedule properties are ancestral properties of late Madhusudhana Reddy and his son (defendant No.2) and therefore, they are coparceners and Madhusudhana Reddy cannot execute Gift Deeds in favour of his

daughter (Defendant No.1/revision-petitioner) and it is not binding on the plaintiffs as they are daughters of defendant No.2 and they can question the Gift Deeds executed by their paternal grandfather Madhusudhana Reddy; they came to know about the said Gift Deeds when defendant No.1 filed the written statement in the suit; and hence, the contention of revision-petitioner that she acquired right by bar of limitation is not tenable and further, the issue of limitation raised by revision-petitioner/defendant No.1 in the above circumstance, is a mixed question of fact and law, and it can be decided only after recording evidence in the trial; hence, the Trial Court did not commit any error while allowing the application filed for amendment.

8. It is an admitted fact that the respondents/plaintiffs filed the suit initially for 'Declaration' and 'Partition' contending that the plaint 'A' and 'B' schedule properties are ancestral properties of their father (defendant no.2) and grandfather Madhusudhana Reddy and there was a partition between defendant No.2 and his father in the year 1982 and later, Madhusudhana Reddy executed a Will in the year 1990 bequeathing the properties, fell to his share in favour of his wife Seshamma with life interest and vested remainder to the plaintiffs and his son and as such, the plaintiffs have a share in the plaint schedule property.

9. The revision-petitioner/defendant No.2 filed written statement contending that the plaint 'A' and 'B' schedule properties were bequeathed to her by her father late Madhusudhana Reddy and three (03) Gift Deeds were executed in the year 1981 and therefore, she acquires right in the said properties, and the suit is not maintainable.

10. The respondents/plaintiffs on perusing the plea taken in the written statement filed by revision-petitioner/defendant No.1, filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of plaint seeking relief to declare that the documents stand in the name of defendant No.1 as null and void to the extent of 1/4th share of the plaintiffs, out of the item Nos.1 and 2 of plaint 'A' schedule property and out of total extent of Ac.2.00 cents in plaint 'B' schedule property.

11. The revision-petitioner/defendant No.1 filed counter before the Trial Court opposing the application, contending that the claim of the petitioners is barred by limitation and the defendant No.2 i.e., father of the plaintiffs never raised objection about their alienation made by Madhusudhana Reddy in favour of the daughter in the year 1981 prior to the date of partition and therefore, the proposed amendment would defeat their right acquired by limitation.

12. The Trial Court under Impugned Order, dated 13.03.2015, 'Allowed' the application observing that the contentions raised by both parties would be decided at the trial and the amendment is necessary for arriving a correct decision in the case.

13. The Honourable Supreme Court in **Radhika Devi vs. Bajrangi Singh and others**¹ relied on by the learned counsel for the revision-petitioners, held as para-No.6 as under:

“Where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleading, amendment in such circumstances would be refused.”

14. In the present case, the contention of the revision-petitioner is that the disputed properties are self-acquired property of her father, and he executed the Gift Deeds in the year 1981. The contention of the respondents/plaintiffs is that the disputed properties are ancestral properties of their grandfather Madhusudhana Reddy, who is father of the revision-petitioner and defendant No.2, who is father of the plaintiffs and therefore, late Madhusudhana Reddy and defendant No.2 are coparceners to the property and as such, any alienation made by Madhusudhana Reddy against the interest of other coparceners

¹ AIR 1996 Supreme Court 2358.

are not valid and binding on defendant No.2 and the plaintiffs, being the son and daughters, acquire right over the property by birth as coparceners and they came to know about the alleged Gift Deeds when defendant No.1 filed the written statement and as such, they were advised to file amendment petition to declare that those Gift Deeds are not binding on them to the extent of their share in the property.

15. Therefore, as per the contention of the revision-petitioner/defendant No.1 that it is a self-acquired property of Madhusudhana Reddy; whereas the contention of respondents/plaintiffs is that it is an ancestral property of late Madhusudhana Reddy and defendant No.2. Hence, the question of limitation would depend upon in the nature of the property i.e., whether it is coparcener property or self-acquired property of late Madhusudhana Reddy.

16. In ***Pankaja & another vs. Yellappa (dead) by LRs and others***², the Honourable Apex Court held that it was in the discretion of the court to allow an application under Order VI Rule 17 of the CPC seeking amendment of the plaint even where the relief sought to be added by amendment was allegedly barred

² (2004) 6 SCC 415.

by limitation. It was pointed out that the court's discretion in this regard depends on the facts and circumstances of the case and must be exercised on a judicial evaluation thereof. The principles were laid down by the Honourable Supreme Court is as under:

“12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.

13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves

the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.”

17. In the case on hand, the nature of property cannot be decided at this stage of amendment. It can be decided only after recording evidence during trial. Admittedly, the suit was initially filed by respondents/ plaintiffs seeking the relief of a ‘Declaration’ also that plaint schedule properties are ancestral properties of the plaintiffs and defendants, apart from the relief of partition.

18. The proposed amendment is only for a ‘Declaration’ that the Gift Deeds claimed by the revision-petitioners are not binding on the plaintiffs to the extent of the share of plaintiffs. In that view of the matter, this Court is of the considered opinion that the question whether the revision-petitioners perfected their right over the schedule property in dispute would depend upon the nature of the property. Further, no prejudice would be caused to the revision-petitioners, if the amendment is allowed since, initial prayer of the suit was also to declare that the suit properties are ancestral properties of the plaintiffs and defendants.

19. In view of the above rival contentions and nature of the dispute regarding the plaint schedule properties, the question of limitation would depend upon the evidence adduced in the trial. In such circumstances, the decision relied by the revision-petitioners will not help their case.

20. In that view of the matter, there are no grounds to interfere with the impugned Order of the Trial Court, as the Trial Court rightly observed that the contentions raised by both parties would be decided in the trial of the suit. Therefore, the revision-petition is liable to be dismissed.

21. In the result, the Civil Revision Petition is 'Dismissed'. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

B.V.L.N.CHAKRAVARTHI, J

4th April, 2023.

DNB