

HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE TWENTY FIRST DAY OF FEBRUARY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI
CIVIL REVISION PETITION NO: 3491 OF 2019

Between:

1. VEGUNTA MAHARANI SAMYUKTHA W/o. Vegunta Srihari Nataraja
Hanuma Vital Prasad Babu,
Hindu, Female, Aged about 61 Years, Cultivation, R/ o. 8-1-12/2,
Benerjipeta, Near Old Panduranga Talkies,
ELURU, W.G.- EJCJC.

...PETITIONER(S)

AND:

1. YELAMANCHILI BHUVANESWARI DEVI W/o. late Peda Babu
Hindu, Female, Aged 55 Years, Housewife,
R/o. D.No. 24A-5-9.
Ashoknagar,
ELURU. W.G.Dist. EJCJC.
2. Sri Ravada Gandhi , (R2/D2) S/o. Kamalakshi,
Hindu, Male, Aged 43 Years, Cultivation,
R/o. D.No. 3-103B,
SATYAVOLU VILLAGE,
Pedapadu Mandal, W.G., EJCJC.
3. Smt. Bendu Krishna Kumari, (R3/D3) W/o. Maddeswara Rao,
Hindu, Female, Aged 35 Years, Housewife, R/o.D.No.3-24/1,
SESHACHALAPURAM VILLAGE
Pedapadu Mandal, W.G., EJCJC.
4. Sri Gudipudi Rama Rao (R4/D4)
S/o. Appaiah,
Hindu, Male, Aged 62 Years, Cultivation,
R/o.D.No. 1-108,
SATYAVOLU VILLAGE,
Pedapadu Mandal
5. Smt. Katari Venkata Narasama, (R5/D5)
W/o. Peda Ver.kateswara Rao,
Hindu, Female, Aged about 76 Years, Housewife, R/o. D.No. 3-23/3,
SESHACHALAPURAM VILLAGE
Pedapadu Mandal, W.G.Dist., EJCJC.
6. Katari Peda Venkateswara Rao, (R6/D6)
S/o. Ramaiah,
Hindu, Male, Aged 82 Years, Cultivation,
R/o. D.No. 3-23/1,
SESHACHALAPURAM VILLAGE, Pedapadu Mandal,W.G., EJCJC.
7. Sri Marada Ranga Rao , (R7/D7)
S/o. Rami Naidu,
Hindu, Female, Aged 62 Years, Cultivation
R/o. D.No. 2-129,
SATYAVOLU VILLAGE,
Pedapa.du Mandal, W.G., EJCJC.

8. Smt Kancharapu Venkata Rangamma (R8/D8)
W/o. Ranga Rao,
Hindu, Female, Aged about 45 Years,
Cultivation,
R/o. D.No. 3-39B,
SESHACHALAPURAM VILLAGE,
Pedapadu Mandal, W.G., EJCJC.
9. Sri Marada Apparao , (R9/D9)
S/o. Rami Naidu,
Hindu, Female, Aged 58 Years, Cultivation,
R/ o. D.No. 2-129,
SATYAVOLU VILLAGE,
Pedapadu Mandal, W.G., EJCJC.
10. Sri Metta Arjuna Rao, (R10/D10) S/o. Dalaiah,
Hindu, Male, Aged 69 Years, Cultivation, R/o. D.No. 3-26,
SESHACHALAPURAM VILLAGE,
Pedapadu Mandal, W.G.Dist.,

2022:APHC:6768

...RESPONDENTS

Counsel for the Petitioner(s): C VENKAI AH

**Counsel for the Respondents: DAMARAJU MADHUSUDHAN VIJAY
KUMAR**

The Court made the following: ORDER

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI**Civil Revision Petition No.3491 of 2019****ORDER:**

This civil revision petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/1st defendant is directed against the orders dated 14.02.2019, of the learned I Additional District Judge, West Godavari at Eluru, passed in IA.No.1253 of 2018 in OS.No.38 of 2014 filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('the Code', for brevity) allowing the plaintiff to delete the names of defendants 2 to 10 and to amend the plaint.

2. Heard Sri Venkaiah, learned counsel appearing for the revision petitioner/1st defendant and Sri Damaraju Madhusudhan Vijay Kumar, learned counsel for the 1st respondent/plaintiff.

3. The case of the plaintiff in the affidavit filed in support of the request for amendment of the plaint, in brief, is this:

The suit is filed for declaration of title over the plaint schedule property and for possession of the same. When the suit is coming up for trial, on 10.01.2017, the plaintiff came to know that the 10th defendant died leaving behind him his wife and three children. The plaintiff filed applications to set aside the abatement and bring the legal representatives of the deceased 10th defendant on record, along with delay condonation application. The plaint schedule property is part and parcel of a total extent of Ac.34.00 cents. The defendants 1 to 10 are no way concerned with the plaint schedule property of an extent of Ac.1.98 cents in R.S.No.141/1 of Satyavedu. In the meanwhile, the elders intervened in the matter and tried to settle the

dispute amicably. Except the 1st defendant who did not appear before the elders, all other defendants agreed for the settlement. In view of the changed circumstances, on 13.08.2018, a Memorandum of Understanding' was executed between the plaintiff and defendants 2 to 9 and the legal representatives of the deceased 10th defendant. In the circumstances, it has become necessary to seek amendment of the plaint by deleting the names of defendants 2 to 10 from plaint as defendants 2 to 9 and the legal representatives of defendant No.10 are supporting the case of the plaintiff. Hence, the instant application has been filed to delete the names of defendants 2 to 10 and also to permit the plaintiff to waive her claim against the defendants 2 to 10 and to further permit her to seek consequential amendment.

(b) The proposed amendments sought for by the plaintiff are as follows:

(i) Delete the names of defendants 2 to 10 from both the short cause title and long cause title and the words "Defendants" for such cause titles be permitted to amend as "defendant".

(ii) Wherever the word "1st defendant" is present in the plaint, the same may be permitted to be amended as "defendant".

(iii) Add the word 'deleted' before the word 'defendants 2 to 10' at 2nd line in para No.6 of the plaint.

(iv) Wherever the word '2nd defendant' appears in the plaint, it be amended as 'deleted 2nd defendant'

(v) Wherever the word 'defendants 2 to 10' or the word 'defendants 3 to 10' appears in the main plaint, it be amended as 'deleted defendants 2 to 10' and 'deleted defendants 3 to 10' respectively.

(vi) Delete the following underlined portion 'Though the 2nd defendant is maintaining such a fish tank, no share amount is being given to the plaintiff. For which some disputes arose between the plaintiff and the

2nd defendant. It is a fact that the defendants No.3 to 10 are the followers of 2nd defendant. The fact remains that taking advantage of the plaintiff's loneliness the 2nd defendant hatched up a plan to grab the plaint schedule land, in fact, the 2nd defendant agreed to pay Rs.45,000/- per acre per year. But no single N.P is paid to plaintiff. Whenever the plaintiff personally or through mediators asked about her share, the same is being postponed on one pretext or other from para No.6 and insert the following in such place.

Insert the following in place of the above underline portion in para 6 of main plaint:

'Though the deleted 2nd defendant is maintaining such fish tank, no amount was being given to the plaintiff. For which some disputes arose between the plaintiff and the deleted 2nd defendant. Taking advantage of the same the deleted 2nd defendant stopped in paying the lease amount to the plaintiff out of the total Ac.34-00 cents fish tank.'

(vii) Delete the portion "The defendants 2 to 10 are no way concerned for the same. Only for grabbing the plaint schedule property, the defendants 2 to 10 intentionally pressed the 1st defendant into service as if she is the absolute owner for the plaint schedule and she has been receiving the income derived on such property. Hence the plaintiff is constrained to file the present suit for declaration of her title over the plaint schedule property and for getting possession of the same. So also the plaintiff filed the present suit for damages for illegal use and occupation of the plaint schedule. The plaint schedule property, which is part and parcel of the total Ac.34-00 fish tank, will fetch an annual rent of Rs.99,000/- (ninety nine thousand rupees only)" from para No.10 of the plaint and insert the following sentence in such place.

'The defendant is no way concerned to the plaint schedule and hence the plaintiff is constrained to file the suit for declaration of her title over the plaint schedule.

(viii) Delete the last sentence, i.e., The plaintiff understood that the 1st defendant became a tool in the hands of the aid Ravada Gandhi and others for some illegal benefits from para No.11 of the plaint.

(ix) Delete the portion 'The present contention of the defendants 1 to 10 is that the 1st defendant is the absolute owner of the plaint schedule property and she has been getting her share of income out of the total

Ac.34-00 cents. If it is true, what instigated the defendants 2 to 10 to file such caveat petition dt.1-8-2011 against the plaintiff from para No.12 of the plaint.

(x) Delete the portion "When really all the defendants 1 to 10 were partners for the total Ac.34-00 cents in R.S.No.141/1 of Satyavolu, Pedapadu Mandalam, as on the date of said Caveat petition dated 1.8.2011, why the defendants themselves ascertained their title over the plaint schedule herein also. Why the 1st defendant did not raise her voice by such time.

(xi) Delete the last sentence i.e., and for possession of such schedule property and also for the damages for the illegal use and occupation of the schedule property from para 12 of main plaint.

(xii) Delete the (sic portion) b) in respect of valuation for damages

(xiii) Delete the valuation for jurisdiction, except the sentence "Total value of the suit for jurisdiction is Rs.7,42,500-00" and "On which a total court fee paid is Rs.9926/-.

(xiv) Delete the portion 'and direct the defendants 1 to 9 & 11 to 14 to deliver possession of plaint schedule to the plaintiff' from prayer a) portion.

(xv) Delete the prayer portions b) and c).

(xvi) Insert the prayer b) as 'pass consequential injunction orders against the defendant, her men and agents from ever interfering into the plaintiff's peaceful possession and enjoyment.

(xvii) Amend the prayer d) as c) and further amend the prayer e) as d)

(xviii) Insert the following paragraph as para No.12(A) to the main plaint.

'During pendency of suit proceedings, the well meaning elders intervened into the matter and except the plaintiff all the deleted defendants 2 to 9 and LRs of 10th defendant attended before the elders and enquiry was conducted and in which it is ascertained that the plaintiff is the absolute owner for the plaint schedule property. Finally the deleted 2nd defendant who is managing the total Ac.34-00 cents fish tank in which the plaint schedule property part and parcel agreed to allot the share in respect of the plaint schedule to the plaintiff. For

which Memorandum of Understanding dt.13-08-2018 was executed in between the plaintiff on one side and the deleted defendants 2 to 9 and LRs of 10th defendant on other side in which the plaintiff is allowed to receive her lease amount out of the total Ac.34-00 cents fish tank. As per the instructions of the elders the plaintiff deleted the defendants 2 to 10 from the main plaint and further restricted her claim only for declaration of her title over the plaint schedule and waived her claim in respect of damages.'

4. The case of the 1st defendant in the counter, in brief, is this:

All the defendants are necessary parties to the suit and the suit cannot be effectively adjudicated without them. The 2nd defendant filed written statement, which was adopted by defendants 3 to 10, averring that all the defendants together gave an extent of Ac.33.53 cents situated in Satyavedu village on lease to Naveen Purnachand in the year 2011 for fishy culture by entering into written lease agreement dated 22.08.2011 on agreed amount of Rs.42,000/- per acre per year. All the defendants will be given the lease amount for their extents respectively. The period of lease is 10.08.2011 to 10.08.2016. The 2nd defendant denied the title of the plaintiff over the property and stated that the schedule property belongs to the 1st defendant. The schedule property belongs to the 1st defendant and plaintiff has no right, title over the same. The plaintiff might have prevailed over the defendants 2 to 10 and influenced them and in collusion with them, filed the application seeking amendment. Hence, the petition may be dismissed.

5. On contest, the trial Court allowed the petition of the plaintiff. Therefore, the 1st defendant is before this Court.

6. The revision petitioner/1st defendant while reiterating her pleaded case *inter alia*, urged as follows:

(a) The instant application in I.A.No.1253 of 2018 is filed by the plaintiff to nullify the admissions made by the other defendants in their written statement. After filing the written statements and after framing of issues, the plaintiff filed the present application seeking to delete the names of defendants 2 to 10 from the plaint and also to delete the prayer for possession of schedule property and to consequently amend the plaint. The order impugned is contrary to the settled legal position and is, therefore, liable to be set aside.

(b) The revision petitioner mainly argued that the trial Court erred in allowing the amendment indirectly giving effect to the provisions of Order 1 Rule 10 by resorting to the provisions of Order VI Rule 17 of the Code ignoring the resultant withdrawal of the admissions already made by the other defendants in favour of the revision petitioner/1st defendant.

7. On the other hand, it is the contention of the learned counsel for the respondents/plaintiff that since the parties entered into compromise, the situation is covered by Order XXIII Rule 1 of the Code and it is the choice of the plaintiff whether to proceed against the defendants or to withdraw the case against them, and therefore, the defendants cannot compel the plaintiff to prosecute the suit and relied on the decision of this Court in in **Allu Appaswamy v. Maturu Anjaneyulu**¹. He further submitted that mere quoting of a wrong or inappropriate provision is not criteria as held by the Supreme Court in **Pruthvirajsingh Nodhubha Jadeja (D) by LRs v. Jayeshkumar**

¹ AIR 1974 AP 268

Chhakaddas & Others², wherein it was held that it is well settled law that mere mentioning of an incorrect provision is not fatal to the application, if the power to pass such an order is available with the Court.”

8. In **Allu Appaswamy** (supra), the Hon’ble Supreme Court observed as under:

“Now, under Order XXIII Rule 1, C.P.C. at any time after the institution of a suit, the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim. According to sub-rule (2) where the court is satisfied about the defects in the suit, it may, on such terms as it thinks fit grant the plaintiff permission to withdraw, from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of a claim. What follows from this provision of law is that it is only when the plaintiff desires to file a fresh suit in respect of the same subject-matter or part of it that the permission of the court is required in other cases, the plaintiff is free to either withdraw the suit or abandon part of his claim as against all or any of the defendants.....”

It was further observed therein as under:

“.....It is fairly clear that a withdrawal under Sub-rule (1) may be in any form; where the plaintiff enters into a compromise with the defendant but does not communicate the terms of compromise to the Court he is held to have withdrawn his suit under sub-rule 1. Similarly, where a suit is dismissed at the request of the parties on a memo of compromise filed, the dismissal operates as a withdrawal of the suit under sub-rule (1).”.

² Civil Appeal No.10521 of 2013 dated 04.10.2019

9. The 1st respondent/plaintiff sought to delete the defendants 2 to 10 and amend the plaint on the basis of the compromise entered into between the plaintiff and defendants 2 to 10, but instead of getting the compromise recorded or withdraw the suit or abandon the claim as against them. It is no doubt true that the plaintiff can sue a party against whom the relief can be sought, but that right is not absolute and the same can be exercised so long as it does not cause prejudice to the other parties to the *lis*. Here, in the present case, in the written statement filed by the 2nd defendant, which was adopted by the defendants 3 to 10, the title of the 1st defendant along with other defendants in the property and joint investment of money for the development of the property and sharing the yield out of it by all of them together are admitted. Thus, the pleadings in the written statement are in favour of the 1st defendant.

10. By admission of some rights and liabilities in the pleadings, corresponding right would accrue to the parties in whose favour such admission operates. Thus, unlike in normal course, pleadings cannot be allowed to be wiped out of the record, by way of amendment or otherwise when its effect is to negate the interest accrued in favour of the parties by admission of other parties in the pleadings. By deleting the co-defendants in pursuance of the compromise entered into between the plaintiff and the defendants and consequently amending the plaint, the admissions made in favour of the 1st defendant would be withdrawn to his prejudice. In spite of such a plea taken in the counter, the trial Court failed to examine the merits and demerits of the contentions, in detail. On the other hand, it simply observed that no prejudice would be caused by allowing the proposed amendment.

11. The trial Court has considered the application merely in the light of its observation that the amendment is necessary for the purpose of determining the real question in controversy between the parties taking aid from the decision of the Hon'ble Apex Court in **Cropper v. Smith**³, wherein it was observed that the object behind the amendment of pleadings is to protect the rights of the parties and not to punish them for the mistake made by them in the pleadings. Further, the decision of the High Court in **K. Lasumamma v. K. Laxmi**⁴ has been relied on referring to the observations therein that delay in filing the application itself cannot be a ground for rejecting the proposed amendment and that the proposed amendment, if alters the character of the suit or introduces a new cause of action, the proposed amendment cannot be allowed.

12. By seeking amendment in the present suit, the whole cause of action is being changed. Cause of action means a bundle of facts which are necessary to be established to substantiate the relief. If the said relief claimed in the petition is covered by Order XXIII of the Code as is argued, the course open is to withdraw the suit or abandon the claim by recording that the matter was settled or decree the suit recording the terms of compromise entered into between the parties. In such an event, the pleadings would remain on record and the plaintiff would not prosecute against the defendants with whom the matter is settled and suit is withdrawn or claim is abandoned. In such an event, the right or interest accrued to the 1st defendant, by virtue of the admission in the written statement, would not be wiped off. But the petitioner seeks to smear the admissions in the written statement

³ (1884) 26 Ch. D. 700 (CA)

⁴ 2006 (1) APLJ 237

by deleting the defendants 2 to 10 and amend the plaint. Thus, even by adopting the provisions of Order XXIII of the Code, the petitioner cannot get the relief of amendment for deleting the defendants with consequential relief as prayed.

13. It is no doubt true that so long as the relief claimed falls under any of the provisions of law irrespective of the provisions quoted in the petition, the relief can be granted under appropriate provision. However, unless the provision which suits the relief claimed is put to the knowledge of the opposing party, there is no opportunity for the said party to take any plea or advancing arguments within the scope of that provision. In the present case, the petition is filed under Order VI Rule 17 of the Code. Now the arguments are advanced that provisions of Order XXIII Rules 1 and 3 are applicable to the present case. In effect, as per the prayer made, the provisions of Order 1 Rule 10 of the Code also come into picture. Thus, without giving proper opportunity to the revision petitioner/1st defendant, it cannot be said that the petition is maintainable and the relief can be granted under suitable provision of law, since each provision has different considerations for their application to any given situation. However, this plea is not even raised before the trial Court.

14. As already discussed, since the proposed relief is prejudicial to the rights accrued to the revision petitioner by way of admissions made by the co-defendants in the written statement, it is not a fit case to allow the proposed amendments as they stand. Thus, the impugned order is liable to be set aside and I.A.No.1253 of 2018 is liable to be dismissed. If at all, the plaintiff wants to take recourse in pursuance of compromise entered into with defendants 2 to 10,

appropriate steps can be taken as indicated above by the High Court in the case referred to supra.

15. Accordingly, the Civil Revision Petition is allowed setting aside the order, dated 14.02.2019, passed in IA.No.1253 of 2018 in OS.No.38 of 2014 and the petition in I.A.No.1253 of 2018 is dismissed.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

21st February, 2022
RAR

B. S. BHANUMATHI, J