

*** THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR**

+ C.R.P.No. 765 of 2024

% 07-03-2024

Smt.Immadi Shankaramma

....petitioner/Plaintff

Vs.

\$ Sri.Machakanti Bala Goud

....Respondent/Defendant

! Counsel for the petitioner: M/s. Kusuri Satyanarayana

Counsel for the Respondent:

<Gist :

>Head Note:

? Cases referred:

1. (2009) 2 SCC 409
2. 2022 SCC OnLine SC 1128

THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR**CIVIL REVISION PETITION No.765 of 2024****ORDER:**

This Civil Revision Petition is filed seeking to set aside the order and decretal order dated 13.12.2023, passed in I.A.No.622 of 2023 in O.S No.39 of 2016, by the Principal Junior Civil Judge at Mahabubnagar.

2. The brief facts of the case are that the petitioner had filed O.S.No.39 of 2016 seeking 'to declare the sale deed document No.1290 of 1988 dated 13.05.1988, as illegal, null and void and not binding on her'. Subsequently, the petitioner filed I.A.No.622 of 2023 in O.S.No.39 of 2016, under Order 6 Rule 17 of CPC and Rule 28 of CRP r/w Sec.151 CPC, seeking permission to amend the plaint with the following:-

"1(a) It is respectfully submitted that the plaintiff's father in law late Ramaiah alias Ramanna was the original owner, pattadar and title holder of an agricultural lands in Sy.No.400 to an extent of Ac.7-32 gts situated at Yenugonda Village, Mahabubnagar District. The plaintiff's father in law had two sons and two daughters, namely Late Immadi Nagaiah alias Naganna, Plaintiff's husband Immadi Sailu alias Sayanna, Late Ramulamma and Late Anjilamma. After the death of father in law of the Plaintiff, the suit schedule property i.e., Ac.3-36 guntas of Agricultural land situated at Yenugonda Village fell in to the share of the Plaintiffs husband and the rest of the said land admeasuring Ac.3-36 guntas were acquired by brother in law of the plaintiff as his share. As such that suit schedule property is an ancestral property, but not the self acquired property of the plaintiff's husband."

3. Learned counsel for the petitioner contended that when the respondent illegally occupied the subject property and has got implemented his name in revenue records as pattedar, challenging the said action, petitioner filed O.S.No.39 of 2016. It is further contended that the petitioner's father in law was the original owner of the suit schedule property and after his demise, the said property was divided between his legal heirs and the petitioner's husband share fell to an extent of Ac.3-36 guntas. However, the same was inadvertently not mentioned in the said pending suit.

4. Learned counsel for the petitioner submitted that the petitioner had changed the earlier counsel in the Trial Court and upon advice of the present counsel, petitioner filed I.A.No.622 of 2023 in O.S.No.39 of 2016, seeking to amend the plaint and the Trial Court *vide* order dated 13.12.2023, erroneously dismissed the I.A.No.622 of 2023. Aggrieved by the order dated 13.12.2023, petitioner has filed the present civil revision petition.

5. Learned counsel for the petitioner submitted that since the suit schedule property is an ancestor's property, the petitioner and her children being the legal heirs, has the share in the suit schedule

property and further pray this Court to set aside the order dated 13.12.2023 in I.A.No.622 of 2023 in O.S.No.39 of 2016.

6. Heard learned counsel for the petitioner and perused the material available on record.

7. It is relevant at this juncture to take note of the observation of the Trial Court in I.A.No.622 of 2023 in O.S No.39 of 2016 which reads as under:-

6(ii) It was felt that the contentions of the petitioner do not merits any consideration if really the suit property is the ancestral property what made the petitioner not to mention the same in the plaint. She did not even choose to give its nature as ancestral property during her chief examination also. In the Cross examination she vehemently states that her husband was the owner of the property. She was examined on 26.07.2017 and it is her version that suit property belongs to her husband. The suit was filed in the year 2016 and PW1 was cross examined during the year 2017. Now we are in the fag-end of the year 2023, at present the petitioner wants to amend the plaint which changes the nature of the plaint and will cause prejudice to the respondent."

8. Upon perusal of records, it is evident that the petitioner, in the year 2016 had filed O.S.No.39 of 2016 and after a period of (07) seven years, petitioner filed I.A.No.622 of 2023, seeking to amend the plaint. The original suit is one which has been filed by the petitioner seeking to declare the sale deed No.1290 of 1988 dated 13.05.1988, as illegal, null and void and not binding on the plaintiff. Pending the suit before the trial Court, trial was commenced and the cross

examination was also concluded in the year 2017, wherein the petitioner had deposed that her husband was the absolute owner of the suit schedule property and there was no whisper about the subject property as ancestral property. It is further noticed that even in the chief examination, same stand was taken by the petitioner.

9. For convenience, Order VI Rule 17 of the Code of Civil Procedure, is extracted hereunder:

'17. Amendment of pleadings. – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial'.

10. At this stage it is relevant to take note of the orders passed by the Hon'ble Supreme Court in Vidyabai and others v/s Padmalatha and another¹ and Life Insurance Corporation of India v/s Sanjeev Builders Private Limited and Another², the relevant portion of the orders reads as under:

In Vidyabai and others v/s Padmalatha and another

¹ (2009) 2 SCC 409

² 2022 SCC OnLine SC 1128

"14. In Kailash v. Nanhku [(2005) 4 SCC 480], this Court held:

"13. ...In a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for 'trial'."

In Life Insurance Corporation of India v/s Sanjeev Builders Private Limited and Another

"70. (iv) A prayer for amendment is generally required to be allowed unless
(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,
(ii) the amendment changes the nature of the suit,
(iii) the prayer for amendment is malafide, or....
(iv) by the amendment, the other side loses a valid defence."

11. In the present case, it is noticed as per the proceeding, O.S.No.39 of 2016 is at the stage of cross examination and according to the ratio laid down in the above judgments, it is clear that no plaint can be amended once the trial had begun. It is also noticed that petitioner is taking different stands and if the prayer sought by the petitioner is allowed, it would change the nature of the Suit. Therefore, the trial Court had rightly passed the impugned order dated 13.12.2023.

12. In view of the aforesaid reason, there is no force in the submission of the learned counsel of the petitioner and this Court is of the opinion that no strong case has been made out warranting

interference with the impugned order passed on 13.12.2023, in I.A.No.622 of 2023 in O.S No.39 of 2016 and the Civil Revision Petition being devoid of merits deserve to be dismissed and accordingly dismissed.

Miscellaneous petitions pending, if any shall stand closed.

There shall be no order as to costs.

JUSTICE N.V.SHRAVAN KUMAR

Date: 07.03.2024

**Note:-
L.R. copy to be marked.**

**B/o
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