(2013) 11 AP CK 0058

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 3590 of 2012

Institute of Education, Ramachandrapuram		APPELLANT
	Vs	
Ramachandrapuram Municipality and State of A.P.		RESPONDENT

Date of Decision: Nov. 14, 2013

Citation: (2014) 1 ALD 680 : (2014) 2 ALT 13

Hon'ble Judges: M. Seetharama Murti, J

Bench: Single Bench

Advocate: N. Vijay, for the Appellant; B.D. Maheswara Reddy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Seetharama Murti, J.

This Civil Revision Petition under Article 227 of the Constitution of India filed by the unsuccessful petitioner/plaintiff/appellant ("plaintiff for short) is directed against the orders dated 14-06-2012 of the learned Senior Civil Judge, Ramachandrapuram of East Godavari District made in I.A. No. 19 of 2012 in A.S. No. 16 of 2009 filed under Order 6 Rule 17 read with Section 151 of the CPC requesting to accord permission to amend the plaint to include a relief of declaration that the levy and demand of tax for assessment Nos. 10547 to 10551 for the properties bearing Door Nos. 32-4-22/3, 32-4-22/4 and 32-4-22/5 are contrary to the provisions of the Andhra Pradesh Municipalities Act, 1965 (for short, ''the Act'') and the Rules framed there under and that the said levy and demand are also arbitrary, illegal, capricious, and void and also opposed to principles of natural justice and judicial procedure and to further permit consequential amendments, as detailed in the petition.

1. (a) The facts relevant for consideration are as follows:

The revision petitioner filed a suit against the Municipality and another for a perpetual injunction to restrain the defendants from collecting any property tax

illegally from the plaintiff in any manner whatsoever. In the plaint it was inter alia averred as follows:

The plaintiff, a registered society, was established to cater to the educational requirements of the people in and around Ramachandrapuram Municipality and that the educational institution is a purely service oriented educational institution being run without any profit motive and in accordance with the norms prescribed by the Government. u/s 88(1)(c) of the Act, the buildings which are used only for education purpose are exempted from levy of municipal tax. The 1st defendant/Municipality has no authority to impose tax on the educational institution recognised by the Government. The imposition of any such tax in violation of law is Non est in the eye of law and not binding on the plaintiff institution. Therefore, the plaintiff need not seek declaration to declare the demand notice as illegal as the demand is Non est. Suffice, if the plaintiff seeks perpetual injunction to restrain the defendants from collecting any property tax illegally from the plaintiff.

The 2nd defendant (State) had remained ex parte. The 1st defendant/Municipality filed a written statement and resisted the suit. On merits and after full-fledged trial, the trial Court had dismissed the suit of the plaintiff. The trial Court had followed the presidential guidance in a judgment of a Full Bench of this Court rendered on 28-12-2006 in a batch of Writ Petitions between Kakinada Education Society, Kakinada v. Kakinada Municipal Corporation W.P. No. 4214 of 2006 and batch, wherein this Court held as follows:

Therefore, in our view, all the recognized educational institutions including hostel, public buildings and places used for charitable purposes are exempt u/s 85 of the Act provided those institutions, hostels, public buildings and places are used for charitable purposes.

In fact, the trial Court while dismissing the suit of the plaintiff, had also recorded a finding to the following effect:

The contention of the plaintiff is that since the defendant has no authority to impose tax on the recognised educational institution, the said notices ate void ab initio, and that the plaintiff need not challenge the said notices. But the said contention is untenable in view of the judgment of the High Court referred to supra.

The trial Court had also held to the effect that a simple suit for injunction is not maintainable without seeking the relief of declaration that the demand notices issued by the defendant/Municipality are illegal, arbitrary and not in accordance with law.

1. (b) Aggrieved of the judgment of the trial Court, the plaintiff had preferred the first appeal in A.S. No. 16 of 2009 on the file of the learned Senior Civil Judge, Ramachandrapuram; and in the said appeal the plaintiff had filed the application for amendment and sought amendment and consequential amendment of the plaint to

add the relevant pleading and the relief of declaration so as to challenge the validity of the tax levy and demand notices.

1. (c) In the affidavit filed in support of the said petition, the plaintiff had urged as under:

In view of the observations in the judgment of the trial court, the plaintiff was advised to seek the relief of declaration by way of abundant caution. Because of the ignorance of the President of the institution, who is a lay-man, the delay in seeking the moulding of the relief and the amendment of the plaint had occasioned. The delay is not due to any lapses and negligence. No fresh evidence is necessary in the matter covered by the proposed amendment. No prejudice would be caused if the amendment is to be permitted.

2. It is on the strength of the above pleadings the plaintiff had sought amendment of the plaint during the pendency of the first appeal. According to the plaintiff, the relief of declaration was not sought for as the levy and demand of tax was itself challenged as Non est. However, in view of the Full Bench judgment of this Court referred to supra and the observations/findings recorded in the judgment of the trial court also referred to supra, the plaintiff sought amendment of the plaint to include relevant pleadings and the relief of declaration by way of abundant caution. However, the 1st defendant-Municipality in its counter filed resisting the proposed amendment contended as follows:

The plaintiff having contended that it is not necessary to seek relief of declaration, however, sought amendment to include the relief of declaration by stating that such declaration is being sought by way of abundant caution. Thus, the plaintiff had taken contradictory stands. The very frame of the suit is misconceived. The suit was pending for six long years, due to the delay tactics adopted by the plaintiff, and was disposed of in the year 2009. The petition filed for amendment at a belated stage is not maintainable. The suit was dismissed on merits. The President of the institution is not a lay-man. The plaintiff was reckless. Without the necessity of additional evidence, the issue in regard to declaratory relief cannot be decided. The proposed amendment changes the frame of the suit which was originally filed for perpetual injunction. The plaint cannot be permitted to be amended at the stage of first appeal. Such an amendment sought is not permissible in view of the new amended provisions of the Code of Civil Procedure.

3. I have heard the submissions of the learned counsel for both the sides. Both the sides advanced submissions in line with the respective pleadings.

4. While opposing the request for the grant of the proposed amendment strong reliance was placed on the proviso to Order VI Rule 17 CPC. Reliance was also placed on a decision of this Court in Sajana Granites, Madras and Another Vs. Manduva Srinivasa Rao and Others, wherein the facts would show that an amendment was sought when the matter was before the court of first appeal; and the court was of

the view that such an amendment was sought without explaining any reasons for not seeking the amendment when the matter was pending in the trial Court and that the amendment was intended to wriggle out of the admissions made earlier and that the petition for amendment was filed to get over the adverse decision that was given by the trial court on the basis of admissions made by the party. A reading of the reported decision would show that the decision was rendered having regard to the facts of that case. Reliance was next placed on the decision of the Supreme Court in Vidyabai and Others Vs. Padmalatha and Another, . In the said decision, the Hon''ble Supreme Court observed that proviso to Order VI Rule 17 of the Code is couched in a mandatory form and, therefore, the courts jurisdiction to allow an application for amendment is taken away there under unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial. The Hon''ble Supreme Court had also observed that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties and only if such a condition is fulfilled, the amendment is to be allowed. Thus, the proviso appended to Order VI Rule 17 of the Code was held to restrict the power of the Court and that it placed an embargo on exercise of its jurisdiction and that unless the jurisdictional fact as envisaged therein is found to exist, the court would have no jurisdiction at all to allow the amendment. In Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, on an analysis of English and Indian case law, the Hon''ble Supreme Court carved out the following principles which should weigh with the Court while dealing with an application for amendment:
(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) Whether the application for amendment is bonafide or malafide;

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

The Supreme Court, however, clarified that the above principles were illustrative and not exhaustive. In Chander Kanta Bansal Vs. Rajinder Singh Anand, the Supreme Court, taking note of the fact that ''due diligence'' has not been defined in CPC, referred to the dictionary meaning of ''diligence'' which is to the effect that it means careful and persistent application or effort or a continual effort to accomplish

something; care; caution; the attention and care required from a person in a given situation, and observed that ''due diligence'' means the diligence reasonably expected from and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. Reference was also made to ''Words and Phrases'' by Drain-Dyspnea (Permanent Edition 13-A) wherein ''due diligence'' was defined in law to mean doing everything reasonable and not everything possible. The Hon''ble Supreme Court, therefore, concluded that ''due diligence'' would mean reasonable diligence and would mean such diligence as a prudent man would exercise in the conduct of his own affairs.

5. Reverting to the instant case facts, what is to be noted is that the plaintiff filed a suit in the year 2003 for perpetual injunction to restrain the 1st defendant/Municipality from collecting in any manner whatsoever, any tax as levied and demanded from the plaintiff; but in the suit, the plaintiff did not challenge the levy and demand notices by seeking a declaratory relief as by then, in the absence of the decision of the Full Bench of this court, the plaintiff was of the view that the levy and demand of taxes by the Municipality from an institution like the plaintiff is Non est and, therefore, such levy and demand notices need not be challenged by seeking a declaration. However, during the pendency of the suit before the trial Court, a Full Bench of this Court had rendered the judgment in Kakinada Education Society, Kakinada v. Kakinada Municipal Corporation W.P. No. 4214 of 2006 and batch (supra) and the trial Court by following the presidential guidance in the said Full Bench decision of this Court had dismissed the suit of the plaintiff inter alia recording a finding that a simple suit for injunction is not maintainable without seeking a declaration that the demand notices issued by the defendant Municipality are illegal, arbitrary and not in accordance with law. The unsuccessful plaintiff having filed the first appeal, therefore, sought the amendment of the plaint during the pendency of the first appeal while maintaining that there is no necessity to seek declaration but the declaration is being sought by way of an amendment for abundant caution in view of the subsequent event, namely, the decision rendered by the Full Bench of this Court. Thus, the case of the plaintiff is that in case the 1st appellate court also comes to the conclusion that the plaintiff is not entitled to the exemption provided u/s 88 of the Act, the plaintiff would be entitled alternatively to contend and succeed by seeking the relief of declaration as sought for in the proposed amendment of the plaint. Nonetheless, the defence of the Municipality is that the amendment sought cannot be permitted at the stage of first appeal and in view of the proviso appended to Order VI Rule 17 of the Code. Notably, the plaintiff is not changing the cause of action; only a broader relief of declaration is being sought by way of proposed amendment in view of a subsequent event, which lead to recording of certain observations in the judgment of the trial court. The proposed amendment, if permitted, neither would introduce a fundamental or constitutional change in the nature and character of the suit nor would change the frame of the suit. Since the amendment was necessitated, according to the plaintiff, on account

of a subsequent event, namely, the rendering of a judgment by the Full Bench of this court settling the legal position, the plaintiff cannot be found fault either for not seeking the amendment at the commencement of the trial or for seeking the amendment at the stage of first appeal; and lack of ''due diligence'' cannot be attributed to the plaintiff, in the facts and circumstances of the case. Applying the settled legal principles set out supra, this Court finds that this is a case where the jurisdictional fact as envisaged in the proviso appended to Order VI Rule 17 of the Code exists and, that therefore, this Court could exercise the jurisdiction to allow the amendment. On an earnest consideration of facts and law, it emerges that the amendment sought is imperative for proper and effective adjudication of the suit and that the application for amendment is bonafide and that the refusal of the amendment would lead to injustice and that on the other hand the allowing of the amendment does not cause any prejudice to the defendant/Municipality. Viewed thus, this Court finds that the refusal to permit the amendment by the Court of first appeal, without examining the factual and legal position and on the ground of exorbitant delay, is not just and fair in the facts and circumstances of the case. As a sequel to the detailed discussion coupled with reasons, this Court holds that the application seeking amendment of the plaint deserves to be allowed and that the order impugned, which suffers from factual and legal infirmities, is liable to be set aside. In the result, the Civil Revision Petition is allowed without costs and the impugned orders dated 14-06-2012 of the learned Senior Civil Judge, Ramachandrapuram of East Godavari District made in I.A. No. 19 of 2012 in A.S. No. 16 of 2009 are hereby set aside and the said application is allowed without costs according permission to the plaintiff/appellant to amend the plaint as detailed in the application. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.