Muthukur Gram Panchayat Vs Kakuturu Ramesh Reddy, Kakuturu Lakshmana Reddy and Kakuturu Ravindra Reddy

Court: Andhra Pradesh High Court

Date of Decision: Sept. 27, 2013

Citation: (2014) 1 ALD 444 : (2014) 2 ALT 526

Hon'ble Judges: B. Chandra Kumar, J

Bench: Single Bench

Advocate: Srinivas Karra, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B. Chandra Kumar, J.
This civil revision petition is filed challenging the Order dated 14.06.2010, passed in I.A. No. 425 of 2010 in O.S.

No. 508 of 2008, by the I Additional Senior Civil Judge, Nellore. The respondents herein are the plaintiffs in O.S. No. 508 of 2008. The parties

will be referred to as they are arrayed in the original suit for the sake of convenience.

2. The plaintiffs filed a suit for permanent injunction basing on easementary rights restraining the defendant/Gram Panchayat from making any

constructions. The written statement was filed in the month of December 2008. In Para No. 4 of the written statement, it was clearly averred by

the defendant that the suit is not maintainable without seeking relief of declaration as alleged by the plaintiffs and then issues have been framed. The

1st plaintiff is examined as PW.1 and he filed chief affidavit. He is a practicing advocate and he was cross-examined on 30.03.2010. During cross-

examination, it was suggested to PW.1 that a suit for permanent injunction without seeking relief of declaration is not maintainable, for which, the

1st plaintiff/PW.1 specifically denied the said suggestion. Then the plaintiffs filed I.A. No. 425 of 2010 under Order VI Rule 17 read with Section

151 of CPC seeking permission to amend the plaint i.e., seeking relief of declaration that they have easementary rights to pass through the land

shown as ABCD in the scheduled mentioned site and have the right of ingress and aggress to the plaint schedule property and consequential

amendments in the suit valuation, Court fees and prayer costs.

3. The 1st plaintiff is a practicing advocate who filed an affidavit in support of the petition. He stated in his affidavit that the plaintiffs filed a suit for

permanent injunction basing on easementary rights to reach the plaint schedule property through the site marked as ''ABCD'' in the plaint plan. It is

also his case that due to over sight they did not seek the prayer for declaration of right of easement and he came to know the same only during the

trial. It is further contended that there are no laches on their part and in spite of due diligence, they could not have raised the matter earlier. It is

further contended that an amendment is necessary for adjudication of the case and the said amendment will not change the nature of the suit and

the same is necessary to avoid multiplicity of the litigation.

4. The defendant filed a detailed counter contending that the written statement was filed in the year 2008 and that he had already taken a plea that

the suit is not maintainable without seeking the relief of declaration of the plaintiffs right and that the trial had already commenced and PW.1 was

also cross-examined in part. It is further contended that no amendment petition under Order VI Rule 17 CPC can be entertained except under

special circumstances mentioned therein and this case would not come under the special circumstance since the question of maintainability was

already raised in Para No. 4 of the written statement in the year 2008. The lower Court, by observing that the plaintiffs have mentioned that they

and their predecessors have been using the vacant site for taking their men, cattle and tractors from times immemorial and they had been enjoying

the said site as easement of right from times immemorial, and referring to the judgment in the case between Mukti Lal Agarwala Vs. Trustees of

The Provident Fund of The Tin Plate Co. of India Ltd. and Others, wherein it is observed that even if declaration is not pleaded the suit is

maintainable for the relief of injunction and since the plaintiffs have already pleaded about their right of easement to pass through the subject

property and that the said amendment would not change the nature of the suit, allowed the petition. Aggrieved by the same, the defendant filed this

revision.

5. Heard.

6. The learned counsel for the petitioner/defendant submits that the trial had already commenced and after commencement of the trial, there were

no special circumstances to allow the petition. It is further submitted that the contention of the plaintiffs that in spite of due diligence they could not

have raised the matter before the commencement of the trial is factually incorrect.

7. The only point that arises for consideration is whether the impugned order is sustainable?

8. Order VI Rule 17 CPC reads as follows:

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 of 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.

9. The above provisions make it clear that:

a) no application for amendment shall be allowed after the trial has commenced;

b) 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. In the instant case, admittedly, the trial has commenced, it was obligatory on part of the lower Court to come to the conclusion that in spite of

due diligence, the plaintiffs could not have raised the matter before the commencement of trial. Admittedly, the 1 plaintiff is a practicing advocate.

Admittedly, they filed suit for permanent injunction and they have not pleaded for declaration of right of easement. It is not necessary to consider

whether a suit for bare injunction is maintainable even if the relief of declaration is not prayed. It is for the lower Court to decide the said issue, if

raised by the parties at the time of deciding the suit. The 1st plaintiff, being a practicing advocate, should not have stated that due to over sight, they

did not seek the prayer for declaration of right of easement and further stated that he came to know about the same during the trial. The specific

case of the plaintiffs is that they came to know about their inaction of seeking prayer for declaration of right of easement during the trial.

11. As seen from the counter filed by the defendant, the defendant had specifically averred in Para No. 3 of the counter as follows:

This respondent further submits that as long back as in the month of December 2008, itself a written statement was filed on behalf of the

respondent herein in the above suit. In the written statement, at Para No. 4, it was clearly mentioned by the respondent herein that the suit is not

maintainable without seeking the relief of declaration of the alleged petitioners'' right. No similar application of this type was not filed immediately

before framing of the issues by this Hon''ble Court.

12. Therefore, the contention of the plaintiffs is that they came to know that they did not seek the prayer for declaration of right of easement only at

the time of trial is factually incorrect and misleading. Admittedly, PW.1 was specifically questioned about this aspect during cross-examination and

he seems to have denied the said suggestion. That means, the stand of the plaintiffs was that a suit for permanent injunction without seeking relief of

declaration is maintainable. It is also the contention of the plaintiffs that there are no laches on their part and in spite of due diligence, they could not

have raised the matter earlier. This version of the plaintiffs is not convincing. Admittedly, after filing of the suit for bare injunction, the defendant filed

a written statement taking a specific plea that the suit is not maintainable, without seeking relief of declaration and having gone through the written

statement filed in 2008, and having came to know the above specific plea of the defendant, the plaintiffs kept quiet till April 2010. PW.1 was

cross-examined and therefore the plaintiffs cannot say that there are no laches on their part and in spite of due diligence they could not have raised

the matter earlier. The pleadings of the parties were within their knowledge and the stand taken by the defendant in the written statement is also

within the knowledge of the plaintiffs and there was utter negligence on part of the plaintiffs in not raising the matter earlier. The lower Court seems

to have committed a mistake in not considering the averments made by the defendant in the written statement and also in the counter. The question

whether the plaintiffs have pleaded about the easementary rights in their plaint or not is immaterial. The important question that the lower Court

ought to have considered is whether the trial commenced or not and once the trial commenced whether in spite of due diligence the plaintiffs could

not have raised the matter before the commencement of the trial or not. Since the lower Court committed an irregularity, the impugned order is

liable to be set aside. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside. Consequently, I.A. No. 425 of 2010

filed by the plaintiffs before the Court below stands dismissed. No costs. Consequently, Miscellaneous Petitions, if any, pending in this revision

shall stand closed.