(2006) 09 AP CK 0029

Andhra Pradesh High Court

Case No: CRP No''s. 2741, 2742 and 4067 of 2006

Amrutha		APPELLANT
	Vs	
G. Ravinder Reddy and Another		RESPONDENT

Date of Decision: Sept. 29, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 6 Rule 17, Order 8 Rule 4, Order 8 Rule 5

Citation: (2006) 6 ALD 757 : (2007) 1 ALT 466

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: P. Shiv Kumar, for the Appellant; B. Dhananjaya, in CRP Nos. 2741 and 4067 of 2006 and Vora Ravi Kumar, in CRP No. 2742 of 2006, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.
These three civil revision petitions arise out of the same suit. Hence, they are disposed of through a common order.

2. The petitioner filed O.S. No. 826 of 2005 in the Court of the II Additional Senior Civil Judge, Ranga Reddy District, against the respondents, for the relief of specific performance of an agreement of sale, dated 21-5-2004, and cancellation of sale deed, dated 27-5-2005, executed by the first respondent in favour of the second respondent. In the plaint, reference was made to the circumstances under which the agreement of sale was executed by the first respondent in favour of the petitioner. It was alleged that even while the said agreement was in force, the first respondent executed the sale deed in favour of the second respondent. The terms of the agreement were also elaborated. The petitioner also filed an application under Order 39 Rules 1 and 2 C.P.C. for temporary injunction stating inter alia that she was

delivered possession of the suit schedule property and that the respondents were trying to interfere with it.

3. Respondents 1 and 2 filed separate written statements in the suit, and counter-affidavits in the LA. The first respondent pleaded that the agreement was entered into, with specific understanding that the transaction must be concluded by 10-6-2004 and since there was violation on the part of the petitioner, it cannot be enforced. The plea of the petitioner as to delivery of possession was not denied.

4. In his written statement and counter-affidavit, the second respondent stated almost whatever was pleaded by the first respondent. In addition to that, he contended that the agreement of sale is unenforceable in law since it was not properly stamped.

5. When enquiry into the LA. filed under Order 39 Rules 1 and 1 C.P.C. was in progress, the respondents have changed their respective Counsel. Thereafter, the respondents filed two applications each, viz., LA. Nos. 515 and 516 of 2006 and LA. Nos. 366 and 367 of 2006. In one application, they sought permission to amend the written statement and in the other, to amend the counter-affidavit filed in the LA. The petitioner opposed the applications. Through the common order, dated 5-4-2006, the trial Court allowed all the applications. Hence, these three civil revision petitions. (Revision filed against the other LA., is said to at an initial stage)

6. Sri P. Shiv Kumar, the learned Counsel for the petitioner submits that the only ground on which the respondents sought amendment to the written statement and the counter-affidavit is that the instructions given by them to their previous Counsel were not reflected in the pleadings. He contends that under such a spacious plea, the respondents intended to relieve themselves from the implied admission as to delivery of possession. The learned Counsel points out that such a course is impermissible in law.

7. Sri B. Dhananjaya, the learned Counsel for the respondents, on the other hand, submits that the amendment sought for by his clients are within the scope and ambit of Order 6 Rule 17 C.P.C. and that no prejudice can be said to have been caused to the petitioner. He contends that no independent plea was taken in the written statement.

8. The right of a party to the suit, to seek amendment of pleadings is kept intact even after the amendment to C.P.C. through Act No. 22 of 2002. The only difference is that a restriction was placed upon the parties concerned, to the effect that amendments, if any, must be sought for, before the trial of the suit commences. Even such a bar is not absolute.

9. With the filing of a written statement, the nature and scope of the dispute between the parties virtually comes to be defined depending upon the nature of denial, admission, etcetera. It is recognized that there can be four types of the

reactions in a written statement, namely admission, denial, res judicata and new plea.

10. Admission can be express or implied. Rules 4 and 5 of Order VIII C.P.C., not only insist that the denial must be specific, but also provide for, the consequences of any lapse, in this regard. They read as under:

4. Evasive denial:-Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Specific denial:-(1) Every allegation of fact in the pliant, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: PROVIDED that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to Sub-rule (1) or under Sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.

11. Whenever an admission, express or implied, emerges, out of a written statement, a corresponding right accrues to the plaintiff. It can be taken away, only through the procedure, recognized under law.

12. In the context of the plea, as to possession of the suit schedule property, the petitioner pleaded that it was delivered to him under an agreement of sale. In their written statements, the respondents, did not deny the said assertion and thereby, they impliedly admitted the delivery of possession, to the petitioner. Through the amendment, it is sought to be pleaded that the first respondent is an illiterate and he was not explained the contents of the agreement and that the possession was not delivered. To introduce this amendment, it is pleaded that though, all the necessary instructions, including the one, which is sought to be introduced through the amendment, were given to the former Counsel, he did not incorporate the same

in the written statement and the counter-affidavit. In their respective affidavits filed in support of the present applications, the respondents stated as under:

I submit that I have given instructions to my earlier Counsel to draft counter and written statement, thereupon he has drafted counter and written statement and took my signatures on them, and the same were filed in the Court. Due to misunderstanding, I revoked the vakalat given to him and has handed over the bundle to my present Counsel.

13. It may be true that the present amendment is intended to elaborate some of the aspects, which were not specifically dealt with in the earlier written statements. Order 6 Rule 17 C.P.C. mandates that the circumstances under which the plea could not taken on earlier occasion and how the necessity arose to introduce the same through amendment, have to be explained. Amendments cannot be ordered as a matter of course. Viewed in this context, it is evident that the respondents based their claim, through the present amendment, only on the alleged lapse on the part of the previous Counsel. If what is stated by them is true, it should have entailed initiation of steps, or exchange of notices, between the respondents and their previous Counsel. In the absence of the same, it has to be proceeded as though, what is stated by them is true and concerned Counsel has to bear the blame. Ordering amendment on this context would amount to recording a finding as to the lapse on the part of the previous Counsel. Such an approach would be unsafe for the legal profession as a whole. In a given case, the parties may throw blame on the legal profession and its members, as a poly, to advance their causes, or to cover lapses on their part. Hence, this Court finds that the respondents cannot be permitted to file these applications simply throwing the blame on the previous Counsel, without satisfying the Court, at least prima facie as to such lapse.

14. The civil revision petitions are accordingly allowed and the orders under revision are set aside. It is made clear that it shall be open to the respondents, to seek necessary amendment, duly satisfying the trial Court as to the nature of the alleged lapse, at least prima facie, on the part of the Counsel, who has filed the written statement and counter-affidavit on earlier occasion. There shall be no order as to costs.