

(2014) 07 AP CK 0068

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 2946 of 2013

K. Mallesh

APPELLANT

Vs

B. Narasimha Reddy

RESPONDENT

Date of Decision: July 8, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, 151
- Constitution of India, 1950 - Article 227
- Contract Act, 1872 - Section 73
- Specific Relief Act, 1963 - Section 21

Citation: (2014) 6 ALD 10

Hon'ble Judges: M. Seetharama Murti, J

Bench: Single Bench

Advocate: S. Subba Reddy, Advocate for the Appellant; Karri Murali Krishna, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Seetharama Murti, J.

This is a civil revision petition under Article 227 of the Constitution of India by the unsuccessful plaintiff/petitioner assailing the orders dated 23.4.2013 of the learned VIII Additional District Judge (Judge, Fast Track Court), Rangareddy District made in IA No. 23 of 2013 in OS No. 627 of 2011 filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 ("the Code" for short) requesting to accord permission to amend the plaint by adding Paragraph 7(a) after Paragraph 7 and Paragraph (aa) before Paragraph (b) in Page No. 12 of the plaint. Be it noted that on examination of the sum and substance of the amendment that was sought by the plaintiff, it is clear that the amendment is being sought to enable the plaintiff to claim compensation of Rupees five lakhs as per the provision under Section 21 of the Specific Relief Act, 1963 ("the Act" for short) for breach said to have been

committed by the 1st defendant and to direct the deduction of the said amount from the balance of sale consideration payable by the plaintiff as per the terms of the agreement to sell dated 15.12.2010.

2. In this civil revision petition, the parties shall be referred to as the plaintiff and the defendants for convenience and clarity.

3. I have heard the submissions of the learned Counsel for both the sides and perused the material record.

4. Now the point for determination is - whether the plaintiff had made out valid and sufficient grounds for according permission to amend the plaint as prayed for in the petition in IA No. 23 of 2013 and as stated in the affidavit filed in support of the said IA? And if so, whether the order impugned is liable to be set aside?

5. Point:

5. (a) Plaintiff filed a suit for specific performance of an agreement to sell dated 15.12.2010. While the suit is coming for filing the written statement of the defendants, the defendants 1 to 3 through their learned Counsel had filed a memo dated 9.2.2012 before the trial Court wherein it is inter alia stated that the said defendants are ready and willing to execute the registered sale deed in favour of the plaintiff provided the plaintiff is ready to pay the balance of sale consideration of Rs. 29,00,000/- with accrued interest from 15.1.2011 till date and that the defendants 1 to 3 are ready to execute the registered sale deed within ten days. Subsequent thereto the plaintiff had filed a memo dated 15.3.2012 stating the objections to the memo of the defendants 1 to 3. In the said memo of objections the plaintiff had inter alia stated as follows: "The 1st defendant had sold the suit schedule property to the defendants 2 and 3 during the subsistence of the suit agreement to sell in favour of the plaintiff and that the 1st defendant had taken a false stand that he had repaid the advance sale consideration of Rs. 5,00,000/- and that the plaintiff had suffered mental agony, physical strain and financial loss besides unnecessary expenditure for filing the suit after paying the Court fee and advocate fee for no fault of the plaintiff. The plaintiff is willing to have the sale deed registered by paying the balance of sale consideration of Rs. 29,00,000/- to the 1st defendant on the 1st defendant complying with the conditions of the agreement to sell and on the 1st defendant handing over sanctioned layout plan, sanctioned house permit, property tax bills and receipts for water and electricity consumption charges and on the 1st defendant further agreeing to have the possession of the suit schedule property delivered by the defendants 2 and 3 to the plaintiff. The claim of interest by the 1st defendant is untenable as the 1st defendant had committed default in complying with the terms and conditions of the agreement to sell." However, the plaintiff had filed another memo dated 17.3.2012 before the trial Court stating to the following effect:- "The trial Court was pleased to direct the plaintiff to deposit the balance of sale consideration of Rs. 29,00,000/- to the credit of the above suit on or before

19.3.2012 and in compliance of the same, the plaintiff had deposited the same to the credit of the above said suit vide bank Challan No. 128329 dated 16.3.2012 of State Bank of Hyderabad, Gruhakalpa Branch, Hyderabad." Along with the said memo, plaintiff had also filed original challan into the Court and had requested the Court below to direct the 1st defendant to deliver all the relevant necessary documents as sought by the plaintiff in the memo of objections dated 15.3.2012 for getting the sale deed registered in the name of plaintiff as the plaintiff is ready with the registration expenses to have the sale deed registered. Subsequent thereto the defendants had further filed a memo dated 20.3.2012 stating that they have no objection if the main suit was to be decreed in favour of the plaintiff without costs. In fact the defendants did not file their written statement. At that stage the plaintiff filed an IA No. 297 of 2012 under Order VI Rule 17 of the Code seeking amendment of the plaint. In that application, amendment was sought to include a relief in the plaint to direct the defendants to furnish the copy of the sanctioned layout plan, municipal taxes receipts, receipts for payment of water and electricity consumption charges etcetera or in the alternative to direct for deduction of an amount of Rs. 2,27,457/- from out of the balance sale consideration payable by the plaintiff to the 1st defendant. On merits, the trial Court had allowed the said application of the plaintiff. Even thereafter the defendants had filed a memo dated 20.11.2012 stating that the plaintiff had not come forward to compromise the matter and that they have no objection if the main suit was to be decreed in favour of the plaintiff without costs. On further directions of the Court, the defendants had filed a further memo dated 7.12.2012 expressing no objection for a decree with costs and as prayed for to be passed in favour of the plaintiff. At that stage of the matter, the plaintiff had filed the present interlocutory application in IA No. 23 of 2013 for amendment of the plaint. By way of the present proposed amendment, the plaintiff intends to amend the plaint to include a relief in regard to the claim of compensation of Rs. 5,00,000/- as per the provisions of Section 21 of the Act on the ground that the 1st defendant has committed breach of the contract and is liable to pay the said amount. While seeking amendment of the plaint to include in the plaint the above said relief in regard to the compensation, the plaintiff had sought other consequential amendments of the plaint as required under facts and in law. The said application was resisted by the defendants by filing a counter by inter alia stating the chronology of events and also by contending that in spite of repeated requests, the plaintiff did not come forward to pay the balance of sale consideration and perform his part of the contract and that, therefore, the 1st defendant was constrained to sell the property to defendants 2 and 3 and that the present petition for amendment was filed without any reasonable ground and only to harass the defendants and that the 1st defendant has always been ready to execute a registered sale deed in favour of the plaintiff and as such the 1st defendant is not liable to pay any compensation much less Rs. 5,00,000/- as claimed by the plaintiff in the proposed amendment.

5. (b) At the time of enquiry before the trial Court, no oral and documentary evidence was adduced. On merits, the trial Court had dismissed the application of the plaintiff. Therefore, the plaintiff had preferred the present revision.
5. (c) The learned Counsel for the plaintiff-revision petitioner submitted that though the defendants had entered appearance in the suit of the plaintiff in the year 2011, they had neither filed the written statement nor additional written statement after the amendment of the plaint was permitted and that they had only filed memos and that the defendants did not come forward to deliver vacant possession of the plaint schedule property and the said conduct manifests that the defendants intend to subject the plaintiff to another round of litigation and that the trial of the suit is admittedly not commenced and that there is no bar for the plaintiff to seek damages and that the order of the Court below in refusing the amendment is contrary to law and suffers from jurisdictional errors. It is also the contention of the plaintiff that a person by name Raju has been inducted by the defendants 2 and 3 into possession of the suit schedule property as a tenant and that he is running a tent house by name "Venkateswar Tent House". In fact, the plaintiff had filed a memo dated 23.3.2012 before the trial Court stating the said facts.
5. (d) On the other hand, learned Counsel for the respondents/defendants had supported the orders of the Court below and had mainly contended that despite the defendants repeatedly filing memos that they are ready and willing to execute registered sale deed, the plaintiff did not come forward to have the sale deed registered and that in the earlier application filed for amendment, the present claim of compensation of Rs. 5,00,000/- was not included and that if really the plaintiff wanted to claim the said compensation he ought to have included this claim also in the earlier application for amendment filed by the plaintiff which was allowed by the trial Court and that the present petition is filed only to harass the defendants and to drag on the matter without allowing the prompt disposal of the suit in spite of the fact that the defendants are ready and willing to execute the registered sale deed in favour of the plaintiff.
5. (e) In reply the learned Counsel for the plaintiff had submitted that in view of the induction of a tenant into the property during the pendency of the suit and the other acts of the 1st defendant committed in breach of the contract, the plaintiff is constrained to seek amendment of the plaint one more time and that the defendants conduct is the only reason for the proposed amendment of the plaint.
5. (f) I have bestowed my attention to the facts and submissions. To restate, in a suit for specific performance filed by the plaintiff, the defendants having filed a memo had expressed their intention and willingness to execute a registered sale deed provided the plaintiff deposits the balance of sale consideration with interest into the Court. The plaintiff having filed objections to the said memo by stating that the 1st defendant had sold away the subject property to the defendants 2 and 3 had later filed another memo stating that as per the orders of the trial Court Rs.

29,00,000/- was deposited to the credit of the suit as per bank challan and within the time as directed by the Court below. Subsequently, an application filed by the plaintiff for amendment of the plaint to direct the defendants to furnish the copy of the sanctioned layout plan, municipal taxes receipts, receipts for payment of water and electricity consumption charges etcetera or in the alternative to direct for deduction of an amount of Rs. 2,27,457/- from out of the balance sale consideration payable by the plaintiff to the 1st defendant was allowed by the trial Court. Even thereafter also the defendants had filed memos as per the direction of the Court below expressing their readiness and willingness to execute and register the sale deed and had further stated in one of the memos that they have no objection for the suit of the plaintiff to be decreed without costs as prayed for. The plaintiff had also expressed willingness stating that he is prepared to obtain the sale deed provided the 1st defendant gets the possession of the property delivered through the defendants 2 and 3. The fact remains that a tenant was inducted into possession of the property and according to the plaintiff the said tenant who was inducted by the defendants 2 and 3 into the property is now carrying on business in the property under the name and style of "Venkateswar Tent House". At that stage, the plaintiff had filed the present interlocutory application seeking amendment of the plaint to enable the plaintiff to claim compensation of Rs. 5,00,000/- in addition to the relief of specific performance on the ground that the 1st defendant had committed breach of the contract and that the plaintiff is entitled to claim the said relief under facts and in law. As already noted, the defendants are opposing the said request of the plaintiff for amendment of the plaint mainly on the ground that the plaintiff had not earlier claimed this relief when he had earlier sought amendment of the plaint and that this present attempt is only intended to drag on the matter in spite of the fact that the defendants are willing to execute a registered sale deed in favour of the plaintiff and have no objection for a decree being passed in the suit. Be it noted that the trial Court had dismissed the application of the plaintiff mainly on two grounds viz., (1) that the plaintiff had earlier filed a petition in IA No. 297 of 2012 seeking amendment of the plaint to include a relief in the plaint to direct the defendants to furnish the copy of the sanctioned layout plan, municipal taxes receipts, receipts for payment of water and electricity consumption charges etcetera or in the alternative to direct for deduction of an amount of Rs. 2,27,457/- from out of the balance sale consideration payable by the plaintiff to the 1st defendant and that the said petition was allowed by the trial Court and that the defendants had acceded to the claim of the plaintiff for deduction of Rs. 2,27,457/- from the balance of sale consideration payable by the plaintiff as sought by the plaintiff and that the plaintiff at the earlier point of time when he sought the said amendment had not included the present claim; and (2) the defendants had filed memos and expressed their readiness and willingness to execute a registered sale deed in favour of the plaintiff and therefore, there is no hurdle whatsoever for prompt disposal of the main suit and the present application of the plaintiff filed for amendment cannot be allowed as the same protracts the litigation as the plaintiff is filing one petition after the other.

5.(g) Learned Counsel for the plaintiff would contend that the plaintiff is entitled to seek amendment of the plaint to enable him to claim compensation of Rs. 5,00,000/- in addition to the relief of specific performance more particularly in view of the subsequent events. Both the learned Counsel fairly submitted that this Court need not go into the merits of the claim for compensation made in the proposed amendment and this Court has to only consider the question whether the amendment should be permitted or not. In this regard a reference to the provision under Section 21 of the Act is necessary. The provision reads as under:

"27. Power to award compensation in certain cases:--(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2) If, in any such suit, the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the Court shall be guided by the principles specified in Section 73 of the Indian Contract Act, 1872 (9 of 1872)

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint: Provided that where the plaintiff has not claimed any such compensation in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation."

In the instant case as the plaintiff had originally claimed the relief of specific performance and had later claimed the relief of delivery of certain documents or in the alternative deduction of certain sum incurred by the plaintiff for securing the documents, from the balance of sale consideration; and the plaintiff is now seeking a fresh amendment of the plaint to enable the plaintiff to claim compensation for breach of contract in addition to specific relief, what is to be noted is that the plaintiff who is suing for specific performance of a contract in regard to the transfer of immovable property is entitled under law provided his case is appropriate not only for the relief of specific performance but also for compensation. However, a relief of compensation shall not be granted unless specifically claimed. The proviso to the provision of law says as follows:

"Provided that where the plaintiff has not claimed any such compensation in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation."

Sub-section (3) of Section 21 of the Act deals with the discretionary power of the Court to grant compensation in case the Court decides that mere grant of relief of specific performance is not sufficient to satisfy the justice of the case and that some compensation for breach of contract should also be made to the plaintiff. The Section of Law clearly contemplates that in a suit for specific performance of a contract the plaintiff may also claim compensation for its breach either in addition to or in substitution of such performance and that in case, where the plaintiff had not claimed any such compensation in the plaint the Court shall at any stage of the suit allow him to amend the plaint on such terms as may be just for including a claim for such compensation. Therefore, the provision of law clearly entitles the plaintiff to seek the amendment of the plaint. In the facts and circumstances of the case and the legal position obtaining, the events namely that an earlier application was allowed for amendment and that at that time, the plaintiff did not seek the present relief or that the defendants are agreeable for the relief of specific performance and that allowing the present amendment would delay the prompt disposal of the suit are no grounds, in the well-considered view of this Court, to reject the amendment of the plaint as the relief sought in the proposed amendment cannot be rejected at this stage, either on technical grounds or on the ground that no valid averments are made in the plaint in support of the proposed claim of compensation as it is not the stage to go into the merits of the claim involved in the proposed amendment. The law clearly allows the plaintiff to seek an amendment of the plaint to include a claim for compensation at any stage of the proceeding. Viewed thus, this Court finds that the impugned order brooks interference. The points are answered accordingly holding that the plaintiff had made out valid and sufficient grounds for permitting the amendment of the plaint and that, therefore, the impugned order is liable to be set aside.

In the result, the civil revision petition is allowed setting aside the orders dated 23.4.2013 of the learned VIII Additional District Judge (Judge, Fast Track Court), Rangareddy District made in IA No. 23 of 2013 in OS No. 627 of 2011. Consequently, IA No. 23 of 2013 in OS No. 627 of 2011 shall stand allowed permitting the plaintiff to amend the plaint. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.