

CASE NO.:
Appeal (civil) 5983 of 2001
Appeal (civil) 5984 of 2001

PETITIONER:
DONDAPATI NARAYANA REDDY

Vs.

RESPONDENT:
DUGGIREDDY VENKATANARAYANA REDDY & ORS.

DATE OF JUDGMENT: 29/08/2001

BENCH:
M.B. Shah & R.P. Sethi

JUDGMENT:

SETHI, J.

Delay condoned in SLP (C) No..... of 2001 (arising out of CC No.5441/2001).

Leave granted.

Dondapati Narayana Reddy, one of the appellants in the above appeals filed Suit No.214 of 1997 against his brothers and father claiming partition of the plaint-schedule property by metes and bounds and separate possession of 2/3rd share of the property. It was submitted that the said plaintiff and defendant No.1 jointly purchased the undivided one half of the plaint-schedule property under registered sale deed dated 12.12.1978 for a consideration of Rs.40,000/-. It was further alleged that they also purchased the remaining one half vide another sale deed dated 10.4.1979 for a further sum of Rs.40,000/-. The grand-father of the appellant Dhondapati Narayana Reddy who had undivided one-third share in the said property executed a registered Will dated 20.8.1994 bequeathing his entire estate to the plaintiff-appellant. After the death of his grand-father, the plaintiff and his brothers became absolute owners of one-third undivided share in the property and along with their father's one-third share they became owners of two-third undivided share in the scheduled property. It is alleged that in his written statement defendant NO.1 did not dispute the existence of will dated 20.8.1994. On the basis of pleadings of the parties, the court framed an issue to the effect, as to whether the plaintiff was entitled for partition and separate possession.

During the pendency of the suit, the plaintiff filed IA No.1283 of 2000 seeking permission for adducing additional evidence to prove testamentary succession by producing the registered Will dated 20.8.1994 executed by Donapati Tirumala Ramareddy. The application was allowed by the learned Additional District Judge by imposing the cost of Rs.200/- vide his order dated 16.10.2000. Aggrieved by the said order, defendant No.1 filed CRP No.4721 of 2000 in the High Court which was allowed vide the order impugned in the appeal.

As a retaliatory measure the defendant No.1 filed an application

being IA No.1288 of 2000 seeking amendment of the written statement for inclusion of the following para:

"PROPOSED AMENDMENT:

Add para 5(a) of the written statement;

"It is submitted that the alleged will dated 20.8.1984 alleged to have been executed by the father of the 1st plaintiff Trimuala Rami Reddy in favour of his grand son's i.e., plaintiffs 2 to 4 is concocted, fabricated and impersonated document. The said will is not true and genuine and valid under law and the said Tirumala Rami Reddy has no right to bequeath the alleged 1/3rd share in the plaint schedule property".

The trial court dismissed the IA seeking amendment of the written statement vide its order dated 16.10.2000. Aggrieved by the order of the trial court, the defendant-appellant filed CRP No.4692 of 2000 in the High Court which was dismissed vide the order impugned in the appeal.

Both the revisions have been disposed of by the High Court vide a common order dated 13.3.2001.

Learned counsel appearing for the parties have prayed for setting aside the orders impugned in these appeals with prayer for allowing the petition of their respective clients and dismissing the application of the contesting respondents.

Rules governing pleadings and leading of evidence have been incorporated to advance the interests of justice and to avoid multiplicity of litigation. If the claim of plaintiff Dondapati Narayana Reddy is based upon the Will dated 20.8.1994 executed by Donapati Tirumala Ramareddy, the defendant-appellant has a right to seek the amendment of his written statement incorporating the plea sought to be introduced by way of proposed amendment. Such a prayer cannot be denied on hypertechnical grounds. The amendment should, generally, be allowed unless it is shown that permitting the amendment would be unjust and results in prejudice against the opposite side which cannot be compensated by costs or would deprive him of a right which has accrued to him with the lapse of time. Amendment may also be refused, if such a prayer made separately, is shown to be barred by time. Neither the trial court nor the High Court has found the existence of any of the circumstances justifying the rejection of the prayer for amendment of the written statement. Whether or not the amendment is allowed, the trial court is otherwise obliged to decide the validity of the disputed Will which is the basis of the suit filed by the plaintiff. We are of the opinion that the courts below were not justified in rejecting the prayer of the defendant seeking amendment of his written statement.

In view of the fact that the validity of the Will was sought to be challenged by way of amendment, the plaintiff acquired a right to lead evidence to prove its authenticity. Otherwise also when the basis of the suit was the Will dated 20.8.1994, the interests of justice demanded that the plaintiff should have been allowed an opportunity to lead additional evidence to prove its validity. The High Court appears to have adopted a very rigid and technical approach in rejecting the prayer of the plaintiff to lead additional evidence to prove testamentary succession by producing registered Will dated 20.8.1994 executed by Donapati Tirumala Ramareddy.

In view of what has been stated hereinabove, both the appeals are

allowed by setting aside the impugned orders and by allowing the applications filed by the plaintiff and defendant NO.1. The trial court shall allow the defendant to amend the written statement and permit the plaintiff to adduce additional evidence to prove testamentary succession by producing registered Will dated 20.8.1994 as prayed for by him in IA No.1283 of 2000. Costs made easy.

.....J.
(M.B. SHAH)

.....J.
(R.P. Sethi)

August 29, 2001

