NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1669 OF 2019
(@ S.L.P. (Civil) No. 19188 of 2010)

M. REVANNA ...APPELLANT

VERSUS

ANJANAMMA (DEAD) BY LRS. & ORS. ...RESPONDENTS

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

Leave granted.

2. The order dated 09.04.2010 passed in Writ Petition No. 2266 of 2009 (GM-CPC) by the High Court of Karnataka is called in question in this appeal.

3. The appellant herein was Plaintiff No. 1 in the suit being O.S No. 2611/1993 filed seeking partition and separate possession of joint family properties. Plaintiff Nos. 1 to 5, including the appellant herein, filed the said suit seeking partition and separate possession of joint family properties to the extent of 1/6th share to Plaintiff Nos. 1 to 3, 1/6th share to

Plaintiff No. 4 and 1/6th share to Plaintiff No. 5. Initially, only three defendants were made parties to the suit. Immediately upon the appearance of Defendant Nos. 1 to 3, a compromise petition was filed on behalf of Plaintiff Nos. 1 to 5 and Defendant Nos. 1 to 3, contending that the plaintiffs and defendants had divided the joint family and ancestral properties as per the memorandum of partition dated 18.05.1972 under the Panchayat Parikath. The compromise petition came to be filed in the Trial Court on 22.04.1993. The Defendant Nos. 4 to 6, who also belong to the same family as the persons mentioned above, having come to know about the filing of the compromise petition in the suit for partition, and also having come to know that they were not parties to the suit, filed an application for impleadment and opposed the compromise petition, contending specifically that the joint family properties had not been divided at any point of time and that the family, as well as its properties, continued to be joint. However, the Trial Court vide order dated 04.06.1994 dismissed the suit as having been compromised. The said order of the Trial Court was questioned by Defendant No. 6 before the High Court by filing RFA No. 297/1994 and after hearing, the High Court set aside the order dated 04.06.1994. Consequently,

the suit being O.S. No. 2611/1993 was restored on the file of the Trial Court. The High Court directed the Trial Court to dispose of the suit on merits. After remand, the original Defendant No. 6 was transposed as Plaintiff No. 6 in the suit. The present Respondent No. 1 is the transposed Plaintiff No. 6 in the suit. (Respondent No. 1 expired during the pendency of the appeal herein and her legal heirs have been brought on record).

4. After remand, Plaintiff Nos. 1 to 5 did not adduce any evidence initially. However, Plaintiff No. 6/Respondent No. 1 herein adduced evidence on 02.07.2003 and was thoroughly cross-examined by Plaintiff Nos.1 to 5. Though Plaintiff No. 1 tried to give evidence as PW-2, he did not make himself available for cross-examination from 2003 to 2007. Consequently, he was discharged by the Trial Court. However, after prolonged adjournments, PW-2 made himself available and was cross-examined on 12.02.2008. Thereafter, on 01.09.2008, Plaintiff Nos. 1 to 5 made an application being I.A. No. 22 under Order VI Rule 17 of the Code of Civil Procedure (for short, "the CPC") for amendment of the plaint, pleading that a prior partition had taken place as per the memorandum of partition dated 18.05.1972, as mentioned supra. The Respondent No. 1 herein

and the other two contesting defendants, i.e. Defendant Nos. 4 and 5 objected to the amendment application, contending *inter alia* that the application for amendment of the plaint is not only highly belated but also not bona fide, and that at no point of time was there any partition among the family members. The Trial Court, however, proceeded to allow the application for amendment by the order dated 14.11.2008, which came to be set aside by the High Court by the impugned order dated 09.04.2010. Hence, this appeal by the unsuccessful Plaintiff No. 1. It is relevant to note that Plaintiff Nos. 2 to 5 acting through Plaintiff No. 1 have accepted the order rejecting the amendment application.

5. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order VI Rule 17 of the CPC virtually prevents an application for amendment of pleadings from being 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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore,

the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.

6. As mentioned supra, the suit was filed in the year 1993 and at that point of time, Defendant Nos. 4 to 6 were not made parties to the suit. Plaintiff Nos. 1 to 5 and Defendants Nos. 1 to 3 were the only parties. They had filed a joint memorandum for the dismissal of the suit on 22.04.1993, which was within one or two months of the filing of the suit. The compromise petition came to be rightly dismissed by the High Court in RFA No. 297/1994. In the compromise petition, curiously, it was noted that the joint family properties were divided by metes and bounds in the year 1972. If the partition had really taken place in the year 1972 and was acted upon as per the Panchayat Parikath,

then Plaintiff Nos. 1 to 5 would not have filed a suit for partition and separate possession in the year 1993. Be that as it may, it is clear from records that the suit was being prolonged on one pretext or the other by the Plaintiff Nos. 1 to 5 and ultimately, the application for amendment of the plaint came to be filed on 01.09.2008. By that time, the evidence of both the parties had been recorded and the matter was listed for final hearing before the Trial Court. If there indeed was a partition of the joint family properties earlier, nothing prevented Plaintiff Nos. 1 to 5 from making the necessary application for the amendment of the plaint earlier. So also, nothing prevented them from making the necessary averment in the plaint itself, inasmuch as the suit was filed in the year 1993. Even according to Plaintiff Nos. 1 to 5, they came to know about the compromise in the year 1993 itself. Thus, there is no explanation by them as to why they did not file the application for amendment till the year 2008, given that the suit had been filed in 1993. Though, even when Plaintiff Nos. 1 to 5 came to know about the partition deed dated 18.05.1972 (Panchayat Parikath) on 22.04.1993, they kept quiet without filing an application for amendment of the plaint within a reasonable time. On the contrary, they proceeded to cross

examine PW-1 thoroughly and took more than five years' time to get the examination of PW-2 completed, and only thereafter filed an application seeking amendment of the plaint on 01.09.2008, that too when the suit was posted for final arguments. As mentioned supra, the suit itself is for partition and separate possession. Now, by virtue of the application for amendment of pleadings, Plaintiff Nos. 1 to 5 want to plead that the partition had already taken place in the year 1972 and they are not interested to pursue the suit. Per contra, Plaintiff No. 6/Respondent No.1 herein wants to continue the proceedings in the suit for partition on the ground that the partition had not taken place at all.

7. Having regard to the totality of the facts and circumstances of the case, we are of the considered opinion that the application for amendment of the plaint is not only belated but also not bona fide, and if allowed, would change the nature and character of the suit. If the application for amendment is allowed, the same would lead to a travesty of justice, inasmuch as the Court would be allowing Plaintiff Nos. 1 to 5 to withdraw their admission made in the plaint that the partition had not taken place earlier. Hence, to grant permission for amendment of the

plaint at this stage would cause serious prejudice to Plaintiff No. 6/Respondent No. 1 herein.

8. Accordingly, the order of the High Court quashing the order of the Trial Court dated 14.11.2008, which had allowed the application for amendment of the plaint, is hereby confirmed. The appeal fails and is hereby dismissed.

.....
.....J.
[N.V. Ramana]

.....J.
[Mohan M. Shantanagoudar]

New Delhi;
February 14, 2019.