

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S).3431/2019
(Arising out of SLP(C) No(s). 21990/2014)**

K. SAI BABA

APPELLANT(S)

VERSUS

KOTHAPALLI KISTIAH & ORS.

RESPONDENT(S)

O R D E R

Leave granted.

The respondents filed a suit for declaration of title to the property measuring 2.36 guntas in Survey No. 149, 147 and 150 in Balkampet, Hyderabad and for permanent injunction. An Advocate Commissioner was appointed on 01.03.1990 in I.A. No. 389 of 1989 filed by the respondents. He identified 71 persons who constructed houses in the property. The suit was decreed on 07.02.1994. Aggrieved thereby, the appellant/defendant filed CCA No. 68 of 1994. An interim order of status quo was passed in the appeal by the High Court on 28.09.1995. The respondents filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint as well as the relief in the suit. The respondent sought for a relief of recovery of possession. A perusal of the civil miscellaneous application filed in the appeal would show that the respondents referred to certain alienations made during the pendency of the suit and after the decree was passed. To avoid multiplicity of

litigation, the respondents requested the High Court to permit the amendment of the plaint as well as the prayer in the suit. By the impugned order, the High Court allowed the amendment application on 21.07.2014.

The request made by the respondents for amendment of the relief is to permit them to seek recovery of the possession of the land which was in possession of alienees. Even according to the averments made in the application filed by the respondents, certain alienations were made during the pendency of the suit. None of the alienees are parties to the appeal which is pending in the High Court. No particulars relating to the dates on which alienations were made have been mentioned in the application.

Though the High Court held that the application for amendment has to be allowed to avoid the multiplicity of litigation, we are of the opinion that the application for amendment could not have been allowed. The respondent is not entitled to a relief of amendment of the plaint and prayer in the suit on the ground that alienations were made during the pendency of the appeal. It is clear that some alienations made prior to the decree. In so far as alienations made during the pendency of the appeal are concerned, the respondents failed to provide even the dates on which those alienations were made.

In view of the above, the order of the High Court is set aside and the appeal is allowed.

The respondents are permitted to pursue other remedies, if any, available in law.

.....J.
[L. NAGESWARA RAO]

.....J.
[M.R. SHAH]

**NEW DELHI;
APRIL 05, 2019.**

ITEM NO.46

COURT NO.13

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).21990/2014

(Arising out of impugned final judgment and order dated 21-07-2014 in CMP No. 24353/2002 21-07-2014 in CCCA No. 68/1994 passed by the High Court Of A.p. At Hyderabad)

K. SAI BABA

Petitioner(s)

VERSUS

KOTHAPALLI KISTAIAH & ORS.

Respondent(s)

Date : 05-04-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Ms. Bina Madhavan, Adv.
Mr. S. Udaya Kumar Sagar, Adv.
Ms. Akanksha Mehra, Adv.
M/S. Lawyer S Knit & Co, AOR

For Respondent(s) Mr. K. Parameshwar, Adv.
Mr. Sarath S. Janaradnan, Adv.
Mukunda, Adv.
Mrs. Sudha Gupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the Signed Order.

Pending application(s), if any, stand disposed of.

(ASHWANI KUMAR)
COURT MASTER (SH)

(KAILASH CHANDER)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)