

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.Nos.60, 81, 82, 85, 86 & 143 of 2015

-

-

COMMON ORDER:

-

In this cluster of revisions filed under Article 227 of the Constitution of India, the factual aspects are the same with slight variations, questions of law are the same and the defendant/respondent is also the same, as such, this Court deems it appropriate to dispose of these revisions by way of this common order.

2. In these revisions, challenge is to the orders passed by the Court of the Principal Junior Civil Judge, Jagtial, Karimnagar district, dismissing the applications filed by the petitioners herein under Order VI Rule 17 of CPC.

3. The particulars of the I.As., suits and the corresponding CRPs are as under:

<u>I.A.No.</u>	<u>O.S.No.</u>	<u>C.R.P.No.</u>
373/14	124/12	60/15
344/14	119/12	81/15
367/14	123/12	82/15
342/14	122/12	85/15
343/14	121/12	86/15
372/14	120/12	143/15

4. The petitioners herein are the plaintiffs in the above mentioned suits, instituted for the relief of perpetual injunction in respect of their plaint schedule properties. In their respective suits, the petitioners herein filed the present applications under the provisions of Order VI Rule 17 CPC, seeking amendment of survey numbers of the land in the body of the plaint and the schedule. The defendant/respondent herein opposed the said applications by way of filing counters. The learned Principal Junior Civil Judge, dismissed the said applications. Calling in question, the

validity and legal sustainability of the said orders, the present revision petitions have been filed under Article 227 of the Constitution of India.

5. Submissions/contentions of the learned counsel for the petitioners

-

- (1) The orders under challenge are erroneous, contrary to law and are opposed to the very spirit and object of the provisions of Order VI Rule 17 of CPC.
- (2) The reasons assigned by the learned Judge are neither valid nor cogent nor convincing.
- (3) The learned Judge did not properly appreciate the averments in the affidavits filed in support of the applications and had the same been taken into consideration, the orders impugned would not have emanated.
- (4) The reason assigned by the learned Judge that there would be change of nature of suit in the event of allowing applications is neither sustainable nor tenable as the plaintiffs' requests is for amendment of survey number only, but not the boundaries.
- (5) The other reason that after commencement of the trial, request for amendment cannot be considered in view of proviso to Order VI Rule 17 of CPC is also not tenable as the trial in the suits has not yet commenced.

In support of his submissions and contentions, the learned counsel for the petitioners takes the support of the following judgments:

- (i) **Usha Devi v. Rijwan Ahamd and others** [\[1\]](#)
- (ii) **Rajesh Kumar Aggarwal and ors. v. K.K.Modi and Ors.** [\[2\]](#)
- (iii) **Abdul Rehman and another v. Mohd.Ruldu and others** [\[3\]](#)
- (iv) **Revajeetu Builders and Developers v. Narayanaswamy and Sons and Ors.** [\[4\]](#)

6. Submissions/contentions of the learned counsel for Respondents

- (1) The orders of the learned Judge are in conformity with the provisions of Order VI Rule 17 of CPC.
- (2) There is no illegality nor any material infirmity in the orders impugned and in view of the same, the present revisions under Article 227 of the Constitution of India are not maintainable.
- (3) The present applications for amendment are not maintainable in view of the decrees passed in the earlier suits filed by the plaintiffs/petitioners herein.
- (4) There are absolutely no merits in the case of the plaintiffs in the applications filed under Order VI Rule 17 of CPC and the only option for the petitioners is to file applications in the earlier suits and the present applications are not maintainable.

In support of his submissions/contentions, the learned counsel for the respondent relies on the following judgments:

- (i) **IDPL Employees Cooperative House Building Society Ltd., Hyderabad v. Cyrus Investments Ltd., Mumbai and others** [\[5\]](#)
- (ii) **Naspuri Dharmaiah and another v. Kota Veeraiah @ Dr.V.K.Kota** [\[6\]](#)
- (iii) **Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and Anr.** [\[7\]](#)
- (iv) **Gopala Iyengar and others v. Mummachi Reddiar and others** [\[8\]](#)

7. In the above background, now the issues that emerge for consideration of this Court in these Civil Revision Petitions are;

- (1) Whether the orders under challenge are in accordance with the provisions of Order VI Rule 17 of CPC?
- (2) Whether the impugned orders warrant any interference of this Court under Article 227 of the Constitution of India?

8. The provision of law, which is germane and relevant for the purpose of adjudication of the issues in the present revisions is Order VI, Rule 17 of the CPC, which reads as under:

"Order VI Rule 17 - Amendment of pleadings

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be 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 trial.]”

9. The above provision of law authorizes and empowers the Court to permit amendment of the pleadings that are necessary for the purpose of determining and resolving the real questions in controversy between the parties.

10. Delay is not an absolute ground for refusal of request under these provisions and it is a settled proposition of law that the Court cannot go into the merits of the amendment. The object of the rule is that the Courts are required to try the merits of the case that come before them and consequently to allow all amendments that may be essential and necessary for determination of the real questions in controversy between the parties, provided the same do not cause any injustice or prejudice to the otherside. It is also a settled proposition of law that the Courts while dealing with these applications should not adopt a hyper-technical approach and the applications filed under this provision of law should be allowed to avoid uncalled for multiplicity of litigation. Rules governing the pleadings and leading of evidence are obviously intended for advancement of justice and to avoid multiplicity of litigation. By virtue of Act 22/02, which came into force with effect from 1.7.2002, the Parliament inserted proviso to Order VI Rule 17 of CPC, which stipulates that no

application for amendment shall be allowed after commencement of trial unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial.

Therefore, there is no absolute and complete prohibition of such applications after commencement of trial also, if the party applying for is able to demonstrate due diligence on his/her part.

11. The issues in these revisions are required to be examined in the light of the above aspects. The essence of the case of the petitioners is that they came to know about the basis for proposed amendment only after the survey conducted by the Mandal Surveyor on 11.9.2012 and when the Surveyor told them with regard to location of subject lands in survey number 234, but not in 235 and that the proposed amendment is absolutely necessary for determining and resolving the controversy in the suits and to have complete quietus for the issue and to have finality for the litigation and that the proposed amendment of survey number will not change the original boundaries and nature of suits nor the same takes away the admissions already on record. On the other hand, the case of the respondent is that the proposed amendment would change the nature of suits completely and there are no bonafides in the case of the plaintiffs and there is delay in filing these applications. It is also the case of the respondent that in the earlier suits filed by the petitioners, Survey No.235 was specifically mentioned, as such, the proposed amendment cannot be permitted. It is also the contention of the learned counsel for the respondent that in view of proviso to Sections 5 and 54 of Transfer of Property Act, there is no title for the petitioners, as such, they cannot maintain the suits also.

12. In order to arrive at a just and reasonable conclusion in these matters, the validity and tenability of the contentions are required to be tested and considered and evaluated in the light of the principles laid down in the judgments cited by the learned Advocates.

13. Coming to the judgments cited by the learned counsel for the

petitioners, in *Usha Devi v. Rijwan Ahamd* (1 supra), the Hon'ble Supreme Court at paragraphs 5 to 12 held as under:

“5. Amendment of pleadings used to be one of the easiest things in the course of judicial proceedings before the amendments came to be made in the C.P.C. in the year 1999. It was felt that the provision for amendment of pleadings (Order 6, Rule 17) was greatly abused and it was one of the significant sources of delay in the judicial process. Accordingly, as per the recommendation of the Law Commission, the provision for amendment of pleadings was altogether deleted by Act 46/1999. The deletion of the provision led to widespread protests by lawyers and different legal bodies and as a result the provision was once again introduced, albeit with a rider, by Act 22/2002, with effect from July 1, 2002. In its amended form, Rule 17, Order VI carries a proviso that bars any amendment after the commencement of trial unless the court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

6. As noted above, the trial court found and held that there was singular lack of due diligence on the part of the appellant- plaintiff inasmuch as the wrong description of the suit property was pointedly brought up by the defendants not only in the written statement but also in course of the proceedings of the Misc. Case.

7. Mr. Devashish Bharuka, learned Counsel appearing on behalf of the appellant, submitted that the proviso to rule would come into play only after the commencement of trial and in this case the trial court was in error in rejecting the appellant's prayer invoking the due diligence clause in the proviso. Learned Counsel further submitted that neither the framing of issues nor the proceedings of Misc. case could be taken as commencement of trial. The prayer for amendment was made at the pre- trial stage and hence, the prayer should have been allowed without difficulty as was the position under the unamended Rule 17.

8. Mr. S.R. Sharma, learned Counsel appearing for the respondents-defendants, on the other hand, submitted that the plaintiff-appellant had obtained interim injunction against the defendants in regard to the property as described in the plaint and now the proposed amendment made it manifest that the defendants were made to suffer injunction for a long time with regard to their own property. The prayer for amendment, according to him, was fit to be rejected on that ground alone and allowing the prayer would be quite unreasonable, unjust and unfair. He further submitted that on the plaintiffs own showing the suit in its present form was bound to fail and the permission to amend the plaint would, therefore, amount to giving an undue advantage to the plaintiff. He further submitted that the proposed amendment would not only change the suit property

but would also change the cause of action and would thus render the suit not maintainable in any event. He lastly submitted that the prayer for amendment was made after the commencement of the trial and the trial court had, therefore, rightly rejected the prayer. He maintained that the trial of the suit would commence with the settlement of the issues. In support of the submission that the framing of the issues marked the commencement of trial of the suit, Mr. Sharma, relied upon the decision of this Court in Ajendraprasadji N. Pandey and Anr. v. Swami Keshavprakeshdasji N. and Ors. AIR2007SC806 . In paragraph 57 of the decision, it was observed as follows :

It is submitted that the date of settlement of issues is the date of commencement of trial. (Kailash v. Nanhku: AIR 2005 SC 2441) *Either treating the date of settlement of issues as date of commencement of trial or treating the filing of affidavit which is treated as examination-in-chief as date of commencement of trial*, the matter will fall under proviso to Order 6 Rule 17 CPC. The defendant has, therefore, to prove that in spite of due diligence, he could not have raised the matter before the commencement of trial. We have already referred to the dates and events very elaborately mentioned in the counter-affidavit which proves lack of due diligence on the part of the defendants 1 and 2 (the appellants).

From the above-quoted passage, it appears that the decision did not hold that settlement of issues marks the commencement of trial. Earlier in the decision, the court exhaustively examined the proceedings from date to date and on that basis came to hold and find that the prayer for amendment was made after the commencement of trial.

9. Mr. Bharukha, on the other hand, invited our attention to another decision of this Court in Baldev Singh and Ors. v. Manohar Singh and Anr.: AIR 2006 SC 2832 . In paragraph 17 of the decision, it was held and observed as follows :

Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing

of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion to the court to allow an amendment of the written statement at any stage of the proceedings.

Mr. Bharukha also invited our attention to a three-Judge Bench decision of this Court in Sajjan Kumar v. Ram Kishan 2005 (13) SCC 89. In this decision too the proposed amendment related to correction of the description of the suit premises in the plaint. The amendment was sought on the plea that the description of the property given in the rent note itself was incorrect and the same description was repeated in the plaint and there would be complications at the stage of execution to avoid which the description of the suit premises as given in the plaint needed to be corrected. Another similarity with the case in hand was that the prayer for amendment was opposed by the defendant-respondent on the principal ground that although the defendant had taken the plea in the written statement itself that the suit premises were not correctly described, yet the plaintiff- appellant proceeded with the trial of the suit and did not take care to seek the amendment at an early stage. The trial court rejected the prayer for amendment and the High Court dismissed the civil revision against the order of the trial court. Allowing the prayer for amendment this Court in paragraph 5 of the decision observed as follows :

Having heard the learned Counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. *It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.*

10. In view of the decision in Sajjan Kumar, we are of the view that this appeal too deserves to be allowed. We may clarify here that in this order we do not venture to make any pronouncement on the larger issue as to the stage that would mark the commencement of

trial of a suit but we simply find that the appeal in hand is closer on facts to the decision in Sajjan Kumar and following that decision the prayer for amendment in the present appeal should also be allowed.

11. As to the submission made on behalf of the respondents that the amendment will render the suit non-maintainable because it would not only materially change the suit property but also change the cause of action it has only to be pointed out that in order to allow the prayer for amendment the merit of the amendment is hardly a relevant consideration and it will be open to the defendants-respondents to raise their objection in regard to the amended plaint by making any corresponding amendments in their written statement.

12. The counsel for the respondents also submitted that as a result of the description of the suit property in the plaint the defendants-respondents had to suffer injunction against their own property. We feel that the ends of justice would meet by allowing the proposed amendment subject to a cost of Rs. 10,000/-."

14. In *Rajesh Kumar Aggarwal v. K.K.Modi* (2 supra), the Hon'ble Supreme Court at paragraphs 16 to 20 held as under:

"16. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

17. Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

18. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

19. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court

should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to subserve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

20. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

15. In *Abdul Rehman v. Mohd. Ruldu and others* (3 supra), the Hon'ble Supreme Court, at paragraphs 10, 11, 13 and 17 held as under:

“**10.** Before considering the factual details and the materials placed by the Appellants praying for amendment of their plaint, it is useful to refer Order VI Rule [17](#) which is as under:

17. Amendment of pleadings.-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be 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 trial.

It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

11. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment

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 trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in *J. Samuel and Ors. v. Gattu Mahesh and Ors.*: (2012) 2 SCC 300 and *Rameshkumar Agarwal v. Rajmala Exports Pvt. Ltd. and Ors.*: (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the Appellants have made out a case for amendment.

13. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the Plaintiffs. In view of the same, we verified the averments in the un-amended plaint. As rightly pointed out by Ms. Manmeet Arora, Learned Counsel for the Appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the un-amended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed by the trial Court and High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the Appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment of the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should have been caused to Respondent Nos. 1-3 (Defendant Nos. 1-3 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.

17. In *Pankaja and Anr. v. Yellapa (Dead) By L.Rs. and Ors.* : AIR

2004 SC 4102 : (2004) 6 SCC 415, this Court held that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. In the same decision, it was further held that an amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title.”

16. In *Revajeetu Builders and Developers v. Narayanaswamy and Sons* (4 supra), the Hon'ble Supreme Court at paragraphs 67 to 70 held as under:

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

17. Now, coming to the judgments cited by the learned counsel for the respondent, in *IDPL Employees Cooperative House Building Society Ltd., Hyderabad v. Cyrus Investments Ltd., Mumbai* (5 supra), a Division Bench of this Court at paragraphs 63 to 65 held as under:

“63. As far as the amendment of compromise decree is concerned, the legal position appears to be well settled. When the parties

entered into a compromise and filed a written compromise signed by all the parties and confirm the same before the Court, the Court is bound to pass the Judgment in terms of the compromise, Even if some mistake occurred in mentioning the survey numbers or boundaries or extents, the same cannot be treated as a clerical mistake and could not be ordered to be corrected by the Court unless all the parties give consent for the amendment of compromise memo and consequently, the compromise decree. A consent decree made by consent can only be varied by the consent of the parties. The Court is not empowered to make any variation, alteration or amendment to the terms of compromise.

64. A consent decree is binding upon the parties thereto only, therefore, we are of the considered view that the petitions filed by R-4 to R-14 have to be rejected since the Court is not empowered to amend a compromise decree without the consent of the other parties to the compromise. Admittedly in this case the other parties to the compromise are opposing the petition filed by R-4 to R-14.

65. The contention of the respondents 4 to 14 that the memorandum of compromise and the plan annexed thereto are not in conformity with the original terms of the compromise and that the amendment sought by them is only to bring the same in conformity with the original terms of memorandum of compromise, cannot be considered as no amendment of compromise decree can be carried out without the consent of all the parties to the compromise. Similarly whether there are any variations in the ultimate compromise memo and the original terms of compromise in the plan annexed thereto also cannot be considered even if there are variations. Moreover in all these Applications the parties have filed affidavits and counter affidavits. When the facts are in dispute and when one party alleges that the plan and measurements are not in conformity with the terms of the original compromise memo and when the other side disputes the same, such disputed questions cannot be decided in interlocutory applications without adducing any evidence.”

18. In *Naspuri Dharmaiah v. Kota Veeraiah @ Dr.V.K.Kota* (6 supra), this Court at paragraph 4 held as under:

“4. It is contended by the learned Counsel for the appellants that on the basis of admissions made by the defendant, the judgment should have been rendered in view of Order XII Rule 6 C.P.C. The learned Counsel relied upon various decisions in support of his contention. I do not think that the Courts below erred in law in dismissing the suit and the appeal or that any substantial question arises for consideration in this appeal. On the basis of mere admissions made by the defendant, the decree need not always be granted in terms of the prayer made in the suit. The Court has the duty to see whether the plaintiff is entitled under law to get the relief sought for. The Court

should also see whether the suit is collusive meant to defeat the law concerning public revenues, public policy, etc. The Court ought not to pass a decree mechanically based on the admissions or consent of parties. Coming to the facts of the case, obviously the title cannot pass under an unregistered sale-deed, assuming that such sale deed exists. As long back as in 1951, more or less a similar case had arisen before the Hyderabad High Court in *Kaisar Vardha v. Manvat Rao* AIR 1951 Hyd 63. A Division Bench held:

"Evidently plaintiff is not entitled to patta under the transfer, because the transfer is ineffective under the law of Registration. That being so the mere fact that execution of an ineffective document has been proved by the admission will not complete the defect of title arising under a specific law. It is a well known doctrine of law that consent of parties cannot override a statute."

The existence of the sale deed itself is doubtful as rightly pointed out by the Courts below. Even the alleged xerox copy was taken return of by the appellant for reasons best known to him and it is said to be lost now. If that sale-deed is ignored, even the plea of adverse possession gets dislodged from its foundation. The possession of the plaint schedule house was purportedly delivered pursuant to the alleged sale-deed. When the existence of the sale deed is itself doubtful, the starting point of adverse possession pleaded by the appellant loses its sanctity. There is no iota of evidence in support of the possession hostile to the defendant for a period of 12 years excepting a bare averment in the written statement admitting the plaintiff's possession. The learned Counsel for the appellants contends that there was no occasion to adduce any evidence in view of the admission made in the written statement, more so when no issues were framed. This is the only an over-simplification of the case. In a collusive suit brought about for the purpose of circumventing the law relating to stamp duty and registration charges, the mere admission made by the defendant cannot be considered to be conclusive and proof positive of the factum of adverse possession. There must be some evidence aliunde in support of the plaintiffs' possession. It must be noticed that the appellants are seeking a relief that they should be declared as the exclusive and absolute owners of the plaint schedule house. They are not asking for a mere injunction against the defendant. Thus, in a case like this where the plaintiffs want a judgment in rem concerning the ownership of suit property, they should not be content with the mere admission of the defendant who is too ready to invite a decree by consent. That apart, the very foundation on which the plea of adverse possession rests is wanting in this case. The plea of adverse possession presupposes that the defendant against whom the relief is sought for, is the true owner of the property and the possession of the plaintiffs is hostile to such true owner. But the

appellants failed to produce any evidence to establish that the alleged vendor (defendant in the suit) is the owner of the property having title thereto. The certificate issued by the Municipality a few days prior to the suit and filed along with the plaint does not have much of bearing on the defendant's title to the house. The need to prove that the real ownership vests with the defendant, cannot be said to have been obviated by the mere averments in the plaint and written statement. If that be the case, it is enough if two parties who have nothing to do with the property colluded together and got a decree on the basis of consent and " claim title to the property pursuant to that decree. This would be leading to startling and unjust results. The minimum evidence that is expected to be adduced by the party who seeks a declaration of his exclusive and absolute ownership to the property is to establish that the defendant against whom adverse possession is claimed, is the true owner of the property. On this aspect, the averments in the plaint are sketchy and vague, not to speak of lack of evidence. Thus, the appellants cannot lay undue stress on the admission made by the readily obliging defendant."

19. In *Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana* (7 supra), the Hon'ble Supreme Court at paragraph 16 held as under:

"16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of [Section 53A](#) of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales."

20. In *Gopala Iyengar v. Mummachi Reddiar* (8 supra), a Division Bench of the Madras High Court held as under:

"This contention cannot hold good for the reason that a Civil Court does not confer a right to property which the person does not possess but only declares or enforces a right which he has. Except

in a few cases where decrees themselves are a source of title, the decrees of Civil Courts cannot confer a title to Immovable property which a person does not possess and, therefore, when the plaintiff, had no title at all to the plaint property the mere fact that a Civil Court considered or held that he had title would not confer an interest which he did not possess before, and he must have known that the District Munsif's decree in his favour dated 26th January 1910 was liable to be appealed against and that any payments made by him before the decree was upset were made by him with the knowledge that the decree might be upset on appeal. Therefore, I do not consider that the plaintiff paid the amounts detailed above bona fide with a view to protect the property. It is urged that there was an execution taken out by the mortgagee against the mortgaged property and the plaintiff paid the execution creditor to save the property from execution. It must be remembered that the plaintiff was a mere volunteer and could not claim to have done it by virtue of an interest in the property.

21. A perusal of the orders impugned discloses that for rejecting the prayer for amendment, the learned Principal Junior Civil Judge assigned two reasons principally. They are (1) the proposed amendment would change the nature of suits and (2) no amendment can be permitted after commencement of trial in view of the proviso to Order VI Rule 17 of CPC.

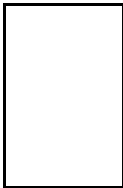
22. With regard to first reason, it is to be noted that by way of proposed amendment, the petitioners herein are seeking change of survey number only, but not the boundaries of the subject properties. It is also not clear from the impugned orders as to how the proposed amendment would alter the nature of the suit. There is no basis for the learned Judge to come to such a conclusion. It is also to be noted that the petitioners herein are not seeking any amendment which has the effect of withdrawing the admissions. Therefore, the said reason is liable to be rejected. The second reason assigned by the learned Judge in the impugned orders is that no amendment of pleadings is permissible after commencement of trial. As per the information available from the learned counsel for the petitioners, which is not disputed by the otherside, the trial has not yet commenced in the suits. Therefore, this reason also falls to the ground. Though a number of contentions have been raised by the learned counsel for the respondent with regard to applicability and effect and impact of

provisions of Transfer of Property Act and correctness and falsity of the case of the petitioners in the proposed amendment and the main suits, this Court is not inclined to accept or express any opinion on the same at this stage in view of principles and parameters laid down in the above referred judgments. The parameters for consideration of amendment applications under Order VI Rule 17 of CPC are different from sustainability, tenability and substantiality of the relief sought by virtue of such amendment. In the facts and circumstances of the case, the judgments cited by the learned counsel for the respondent would not render any assistance to the case of respondent while considering the present applications.

23. For the aforesaid reasons, all the CRPs are allowed, setting aside the impugned orders and consequently the I.As. stands allowed. As a sequel, the miscellaneous petitions, if any, shall stands closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 6.4.2015
DA



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

-
-
-
-
-
-
-
-
-
-

C.R.P.Nos.60, 81, 82, 85, 86 & 143 of 2015

6.4.2015

DA

- [1] 2008(3) ALD 1 (SC)
- [2] AIR 2006 SC 1647
- [3] (2012) 11 SCC 341
- [4] (2009) 10 SCC 84
- [5] 2009 (6) ALD 216
- [6] 1993(3) ALT 712
- [7] AIR 2012 SC 206
- [8] AIR 1923 Madras 392