

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.670 of 2014

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ORDER:

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This Civil Revision Petition is filed challenging the order

dt.29-10-2013 in I.A.No.665 of 2013 in O.S.No.26 of 2007 of the A.P. State Wakf Tribunal, Hyderabad.

2. The petitioner herein is 7th defendant in above suit.

3. Respondent Nos.1 to 7 have filed the above suit against respondent Nos.8 to 13 for declaration that the agreement

dt.16-05-1977 alleged to have been executed by HEH the Nizam VIII Mir Barkat Ali Khan and the Governor of State of Andhra Pradesh on behalf of 11th respondent as illegal, without sanction, null and void and for other reliefs including mandatory injunction directing the

11th respondent to redeliver the Management, Superintendence and Custody of the plaint schedule property to any Committee of any private institution or Trust comprising of prominent persons of Hyderabad. The subject matter of the property of the suit are the Qutub Shah Tombs situated at Golconda Fort, Shaikpet,

Hyderabad.

4. While that suit was pending, the petitioner herein was entrusted under a Memorandum of Understanding dt.09-01-2013 (for short 'MOU') work of conservation and preservation of the above property. Since this is an event which took place during pendency of the suit, the respondent Nos.1 to 7 filed I.A.No.71 of 2013 to implead the petitioner as 7th defendant in the suit along with the A.P. Tourism and Cultural Department represented by its Principal Secretary (14th respondent).

5. After the petitioner was impleaded as 7th respondent in the suit, respondent Nos.1 to 7 filed I.A.No.665 of 2013 seeking amendment of the plaint by incorporating certain paragraphs therein challenging the MOU dt.09-01-2013 entered into with the petitioner by respondent Nos.10 and 11. Respondent Nos.1 to 7 also sought additional reliefs in respect of this transaction which was entered into with the petitioner which is set out in detail in the affidavit and petition in I.A.No.665 of 2013.

6. Counter affidavit was filed by petitioner opposing this amendment contending that it introduces a new cause of action in the suit and is not permissible in law. It is further contended that respondent Nos.1 to 7 do not have any

right to challenge the MOU dt.09-01-2013 entered into by petitioner with respondent Nos.10 and 11. It contended that respondent Nos.1 to 7 are trying to introduce extraneous matters into the suit by way of amendment and are attempting to divert the matter from adjudicating the main issues involved in the suit and that respondent Nos.1 to 7 cannot claim any relief basing on a cause of action which arose subsequent to filing of suit and their only remedy is to file a separate suit for such relief. It is also contended that if this cause of action is added by way of amendment to the plaint, it would amount to misjoinder of cause of action, which is not legally permitted. Petitioner admitted that the principle of *lis pendens* as enumerated in Section 52 of the Transfer of Property Act, 1882 is applicable and that the validity of the MOU would primarily depend on the outcome of the suit. However, it contends that the validity of the MOU or contents of the same cannot be the subject of the suit

7. Respondent Nos.8 and 11 also filed separate counters taking similar stand. They also contended that the MOU with the petitioner was entered into by 8th respondent on behalf of 11th respondent and that it is not between the respondent Nos.10 and 11.

8. By order dt.29-10-2013, the Tribunal allowed the

said application rejecting the above contentions of petitioner. It held that Order VI Rule 17 CPC enables either party to seek alterations or amendments to the pleadings; that the basis for seeking amendment of the plaint was that while the suit was pending and proceedings were going on, without intimating the Wakf Tribunal which was seized of the dispute concerning the subject matter/wakf, on 09-01-2013 an MOU was entered into by the 8th respondent and others entrusting the conservation and preservation works to the petitioner; that petitioner had already been impleaded as a party defendant in the suit since it was considered that its impleadment was necessary; the said order had not been assailed; therefore, consequential amendments to take up the pleas against petitioner and 8th defendant and seeking of reliefs, is also necessary. It however did not allow one particular relief sought by respondent Nos.1 to 7 viz. that certain conditions of the MOU requires modification.

9. Challenging the same, this Revision is filed.

10. The learned counsel for petitioner contended that the order passed by the Tribunal is incorrect and unsustainable and the Tribunal is not correct in allowing

application for amendment of plaint. He contended that the amendment would introduce a new cause of action, change the nature of suit and therefore the Tribunal ought to have rejected it. He contended that the relief now sought goes outside the scope of suit and is not connected to the suit and that MOU is a separate and stand alone transaction and the amendment to plaint questioning the validity of MOU cannot be permitted in the suit.

11. Order VI Rule 17 CPC states :

“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.”

12. In **Abdul Rehman and Another Vs. Mohd. Ruldu**

and others^[1] the Supreme Court held 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. It observed that 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, 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. It held that 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. It 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.

13. Similar view was expressed in **Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others**^[2] where the Court went further and held that if the cause of

action arose during pendency of the suit, the proposed amendment ought to be granted because the basic structure of the suit has not changed and there was merely a change in the relief claimed. It held that if it is permissible for the party to file an independent suit, he should be permitted to incorporate the same in the pending suit.

14. This was also reiterated in **Rajkumar Gurawara (Dead) through L.Rs. Vs. S.K. Sarwagi and Co. Pvt. Ltd. and Another**^[3]. In that case, the Supreme Court held that pre-trial amendments are to be allowed liberally than that sought after the commencement of the trial since the opposite party is not prejudiced and he will have an opportunity of meeting the amendment sought to be made.

15. In the present case it is not disputed that MOU with the petitioner was entered into by 8th respondent herein after the suit was filed. Therefore, respondent Nos.1 to 7 could not have impleaded the petitioner or sought any relief in regard thereto at the time when they filed the suit. The MOU in question admittedly concerns the plaint schedule property and their conservation and preservation and so it cannot be said that the petitioner

had nothing to do with the cause of action in the suit wherein respondent Nos.1 to 7 had questioned the very entrustment of the management of these properties by HEH the Nizam VIII Mir Barkat Ali Khan by way of agreement dt.16-05-1977 to 8th respondent. Therefore, I am of the opinion that the basic structure of the suit had not been changed by allowing respondent Nos.1 to 7 to raise pleas and seeking relief in respect of the MOU which had been entered into in respect of the plaint schedule property after the suit is filed.

16. The situation is akin to one where in a suit for eviction, a defendant creates a third party interest in regard to subject property pending suit. It cannot be denied that in such a situation, the third party may also be impleaded and relief in respect of transaction between the defendant and third party may also be claimed by plaintiff.

17. Admittedly, the trial in the suit had not commenced. Therefore, no prejudice is caused to petitioner or to respondent Nos.8 to 14 in any way because they would have full opportunity not only to amend their written statements but also to lead evidence even in respect of relief sought regarding the MOU. As rightly held by the Tribunal since impleadment of the petitioner is not assailed, there is nothing wrong in allowing consequential

amendment to the plaint in respect of the newly impleaded party like the petitioner and permitting reliefs against them.

18. In this view of the matter, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

19. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 08-07-2015

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[\[1\]](#) (2012) 11 SCC 341

[\[2\]](#) AIR 2006 SC 1647

[\[3\]](#) AIR 2008 SC 2303