

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP.No.630 of 2015

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ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.23.12.2014 in I.A.No.510 of 2014 in O.S.No.5 of 2011 on the file of VI Additional District Judge, Siddipet.

2. The petitioner herein is plaintiff in the above suit.
3. She filed the said suit for partition of plaint schedule properties and for allotment of 1/4th share to her, and also to declare that certain sale deeds executed by respondent nos.1 and 3 in favour of respondent nos.4 to 18 are not binding on her in respect of her share over the plaint schedule property. It is her plea that the plaint schedule properties are joint family properties, and she has a 1/4th share therein along with respondent nos.1 to 3. She contended that the 1st respondent, in collusion with respondent nos.2 and 3, executed several documents from 02.03.2007 to 11.06.2008 alienating portions of suit schedule properties thus depriving her of her legitimate share in the properties, that she had not given her consent to the said alienation, and had not benefited from the said alienations. She, therefore, contended that the said alienations are void *ab initio* and are not binding on her.
4. Written statement was filed by 1st respondent, who is father of petitioner, opposing the suit claim taking inter alia a plea that

there was a prior partition between 1st respondent and his daughters including petitioner.

5. Thereafter, issues were framed.
6. The petitioner had filed her affidavit in lieu of chief-examination and marked Exs.A.1 to A.22.
7. At that stage, she filed I.A.No.510 of 2014 seeking amendment of plaint contending that the alienations said to have been made by respondent nos.1 to 3 in favour of respondent nos.4 to 18 were without any necessity and that on account of hastiness she could not mention the plea in the plaint that the alienations were without any legal necessity or family benefit. She prayed that she be permitted to incorporate in the 4th line of para no.8 of the plaint the words "*without any legal necessity and for any family benefit*". She contended that this would not alter the nature of the suit.
8. Counter-affidavit was filed by 4th respondent herein opposing this application. He contended that it would change the nature of suit and would greatly prejudice the defence of respondents and that this pleading is inconsistent with the original plea in the plaint. It was further contended that the trial has commenced and petitioner did not show that in spite of due diligence she could not have raised this plea earlier, and that the amendment is designed only to delay the legal proceedings.
9. By order dt.23.12.2014, the Court below dismissed the said application. It held that amendment of plaint cannot 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 commencement of trial and that the proposed amendment, if allowed, would go contrary to the original pleading in the plaint and causes prejudice to respondents. It also held that the proposed amendment is not imperative for proper and effective adjudication of the case, and that it does not appear to be a *bona fide* one since it was sought after filing of written statement by respondents. It also observed that refusing amendment would not lead to injustice or lead to multiple litigation and that the proposed amendment changes the nature, and so cannot be allowed. It relied on the decision of Supreme Court in **Revajeetu Builders and Developers v. Narayanaswamy and Sons and Others** in this regard.

10. Challenging the same, the present Revision is filed.
11. Although respondent nos.1, 2, 3, 5, 6, 7, 9, 10, 14, 17 to 20 have been served, there is no re-presentation on their behalf. Respondent nos.4 and 16 were represented by Sri N. Ram Reddy, Advocate. Respondent No.15 was also served but there is no re-presentation on her behalf. Notice to respondent nos.8, 11, 12 and 13 was published in Eenadu Telugu Daily newspaper.
12. Heard Sri M. Rajamalla Reddy, counsel for Revision Petitioner; Sri N. Ram Reddy, counsel for respondent nos.4 and 16 and Sri Sheri Prasad, counsel for 2nd respondent.
13. The counsel for petitioner contended that the view of the Court below that the trial has commenced cannot be accepted since cross-examination of petitioner had not taken place. He contended that the observations of the Court below that the

proposed amendment is contrary to original pleading, or that it is not *bona fide*, or not imperative for proper and effective adjudication of the case, and that it causes prejudice to respondents which cannot be compensated adequately in terms of money, are not correct. He disputed that the proposed amendment changes the nature of the suit and contended that there is already a pleading in the plaint that the alienations made by 1st respondent are void *ab initio* and not binding on petitioner/plaintiff, and that she had not consented to the said alienations or benefited from out of the sale consideration amounts. He contended that a prayer has also been sought in the suit that the sale deeds executed by respondent nos.1 and 3 in favour of respondent nos.4 to 18 are not binding on petitioner in respect of her share over the plaint schedule property and therefore contended that the impugned order be set aside. He relied upon the decisions in **Baldev Singh and Others v. Manohar Singh and Another** and **Brij Gopal Pallod and Ors. vs. Municipal Council Rep.by G. Vasudeva Reddy and another**.

14. On the other hand, the counsel for respondents 4 and 16 supported the order passed by the Court below and contended that once the documents are marked it meant that the trial had commenced and since no valid reason had been given by petitioner why this plea could not be raised before commencement of trial, the Court below had rightly rejected this application. He further contended that allowing the amendment at this stage would cause serious prejudice to respondents, and therefore, the Civil Revision Petition should be dismissed. He relied upon the judgments in **Vempalli Srinivasula Reddy v.**

V.M. Ramakrishna Reddy and others; Ajendraprasadji N. Pande and another v. Swami Keshavprakeshdasji N. and others; Revajeetu Builders (1 supra); and Vidyabai and others v. Padmalatha and another.

15. I have noted the submissions of both sides.
16. From the facts narrated above, it is clear that in the plaint she had already pleaded that the alienations made by 1st respondent and 3rd respondent in favour of respondent nos.4 to 18 are not binding on petitioner and that petitioner had not benefited from sale consideration amounts received thereunder by 1st respondent. It was also pleaded that petitioner was not aware of these alienations and that they are void *ab initio* and not binding on petitioner.
17. The petitioner seeks to now add the plea that these alienations are also without legal necessity and are not for any family benefit as an additional ground to challenge the alienations. Her plea is that out of hastiness this plea was not taken in the plaint.
18. No doubt, the application for amendment has been filed after her affidavit in lieu of chief-examination was filed and after she marked Exs.A.1 to A.22. But the fact remains that her cross-examination has not commenced on the date when she filed this application.
19. Therefore, the point for consideration is whether it can be said that the trial has, in fact, commenced.
20. In **Vempalli Srinivasula Reddy** (4 supra) (2006), cited by the learned counsel for the respondent, a learned Single Judge of

this Court took the view that the trial can be said to have commenced on the filing of the affidavit in relation to the chief examination of a party since it would amount to the commencement of recording of evidence.

21. In **Baldev Singh and others** (2 supra) (2006), cited by the learned counsel for the petitioner, the Supreme Court considered the proviso to Order 6 Rule 17 C.P.C. and held that in a situation where the parties were yet to file their documentary evidence in the suit, it cannot be said that the trial has commenced and that commencement of the trial should be understood in the limited sense as meaning “*final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments*”.
22. In **Ajendraprasadji N. Pande** (5 supra) (2007), relied upon by the counsel for respondents, an application for amendment was filed after three witnesses were already examined, and therefore, the Supreme Court disallowed the plea for amendment of written statement in view of proviso to Order 6 Rule 17 C.P.C. On the facts of the said case, it is clear that the trial had already commenced and therefore the proviso to Order VI Rule 17 CPC was held to be attracted.
23. In **Vidyabai** (6 supra) (2009), also cited by the learned counsel for the respondents, a two-Judge Bench of the Supreme Court distinguished the judgment in **Baldev Singh** (2 supra), and observed that **Baldev Singh** (2 supra) is not an authority for the proposition that trial would not be deemed to have commenced on the date of first hearing. It distinguished the said case on the ground that documents were yet to be filed, and therefore, the trial did not commence.

24. In **Revajeetu Builders** (1 supra) (2009), cited by the counsel for respondents, although the suit in that case was a pre 2002 suit (i.e it was filed prior to the amendment to Or.6 R.17 CPC) and had been filed in the year 1996, the Supreme Court laid down certain guidelines as under :

“63. On critically analysing 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.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”(emphasis supplied)

25. The Supreme Court considered several of its earlier judgments wherein it had emphasized that liberal approach should be the general rule in considering applications for amendment of pleadings, particularly in cases where the other side can be compensated with costs, and that amendments ought to be allowed to avoid multiplicity of litigation.

26. In **Brij Gopal Pallod** (3 supra) (2013), a learned single Judge of

this Court considered the decision in **Vidyabai** (6 supra) and also **Revajeetu Builders** (1 supra) and held that a suit can be said to have been set down for trial only if the witness enters the witness box and offers himself for cross-examination. It held that even if a witness had simply filed an affidavit and did not turn up for cross-examination at all, or if that stage did not reach, it is difficult to infer that trial of the suit had commenced. It observed that both these judgments indicate that the stage of filing of documents is anterior to the commencement of trial. It observed that :

"21. In the ordinary parlance, the hearing in a suit takes place after the recording of evidence is concluded. However, if one looks at the manner in which, the word "hearing" is employed in the C.P.C. itself, it becomes clear that in civil cases, "hearing" can take place even at a stage, anterior to that of recording of evidence, also.

22. After the plaint is presented before a trial Court and the suit is numbered, notices are sent to the defendants. Order [IX](#) C.P.C. deals with the stage at which, the parties are supposed to appear on receiving notice. The word that is employed in different Rules of Order [IX](#) C.P.C. is "appear". The Court is required to take note of the appearance or the non-appearance, as the case may be, of the parties. Beyond that, not even a semblance of hearing takes place at that stage.

23. The next stage is the one, dealt with by Order [X](#) C.P.C. It is important to notice that the crucial expression used in this provision is "first hearing". This may not necessarily be after the first appearance of the parties. In a given case, once all the parties appear before the Court, at the threshold itself, it can take up the matter for "first hearing". Then comes the stage of "inventory and inspection" (Order [IX](#)), ascertainment of admissions in the pleadings (Order [XII](#)), and production, impounding and return of documents (Order [XIII](#)). An important stage of suit viz., framing of issues, under Order [XIV](#) takes place after these formalities are completed. Once the issues are framed on the basis of the pleadings, the parties have to identify the witnesses, whom they intended to examine, as regards the issues, which they have to prove or disprove. Rule [1](#) of Order XVI mandates that on a date which shall be at least after 15 days, from the date on which issues are settled, the parties shall submit list of witnesses, whom they propose to call, either to give evidence or to produce documents. It also provides for payment of amounts to cover the expenses for summoning the witnesses.

24. A reading of Order [XVIII](#) C.P.C. gives an important indication in understanding the stages in the suit. It reads,

1. Right to begin:- the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

2. Statement and production of evidence:-

(1) On the day fixed for the bearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct hearings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.

25. On a close scrutiny, it becomes clear that the Parliament made a distinction between the arguments on the statements that are to be made while producing the evidence, on the one hand, and arguments that are to be made after conclusion of the evidence, on the other.

26. The expressions used in Sub-rule (1) of Rule 2, viz., "state his case and produce his evidence" referring to plaintiff and defendant, obviously refers to the stage, before the evidence is recorded. The fact that the statement of case is not equivalent to final hearing, is evident from the expression "may then address the Court generally" used in sub-rule (2) of Rule [2](#). Another indication is that rest of the Rules in Order XVIII deal with the examination of witnesses, re-examination, recalling of witnesses, etc.

27. The actual hearing of a suit i.e., after the evidence is recorded is dealt with in Rule [1](#) of Order 20, which says 'the Court, after the case

has been "heard" shall pronounce the judgment in open Court'. However, the Parliament added sub-rules (3A), (3B), (3C) and (3D), providing for submission of written arguments, etc., in Order XVIII, which deals with the stage, prior to commencement of evidence. These aspects need to be taken into account, to understand the judgments of the Supreme Court, referred to above.

28. Coming to the facts of the present case, it is not in dispute that the recording of evidence has not commenced in the suit. It is also relevant to take note of the plea of the petitioners herein in their counter filed by them, opposing the I.A. In paragraph 6, it was stated "the petitioner is further precluded for filing of amendment of pleadings "after the suit is set down for trial". As observed earlier, the suit can be said to have been 'set down' for trial, if only the witness enters the witness box and offers himself for cross-examination. If a witness has simply filed affidavit and did not turn up for cross-examination at all, or if that stage did not reach, it is difficult to infer that the trial of the suit commenced. For the foregoing reasons, the C.R.P. is dismissed. The miscellaneous petition filed in this C.R.P. shall also stand disposed of. There shall be no order as to costs."(emphasis supplied)

27. Since the decision in **Brij Gopal Pallod (3 supra)**, has considered the later judgments in Vidya Bai (6 supra) and Baldev Singh (2supra), I am inclined to follow this decision in preference to **Vempalli Srinivasulu Reddy (4 supra)** which was decided before 2009.
28. In the present case also, since the petitioner has not been cross-examined, I am of the view that it cannot be said that trial of the suit has commenced and so the proviso to Order 6 Rule 17 C.P.C. is not attracted.
29. Also on the facts pleaded by petitioner, it cannot be said that the amendment sought for is not imperative for proper and effective adjudication of the case or that it is not *bona fide* or that refusing it would not cause injustice or not lead to multiplicity of litigation.
30. I am also of the opinion that the Court below instead of holistically considering the entire judgment in **Revajeetu**

Builders (1 supra), including the observations made therein as to liberal approach to be adopted in considering application for amendments, parrot-like referred to some of the parameters set out in para.63 extracted above and rejected the application filed by petitioner for amendment. In fact, the Supreme Court itself has observed that the six factors set out in para.63 are only illustrative and not exhaustive. This observation of the Supreme Court appears to have been ignored by the Court below.

31. Even otherwise, in my considered opinion, it cannot be said that respondents cannot be compensated in terms of money for the prejudice allegedly suffered by them by allowing the amendment. It cannot be said that this amendment changes the nature of the suit or is contrary to the pleadings of petitioner in the original plaint.
32. As observed by the Supreme Court in **Jai Jai Ram Manohar Lal v. National Building Material Supply**, rules of procedure are intended to be a hand-maid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting *mala fide*, or that his blunder, had caused injury to his opponent which cannot be compensated by an order of costs.
33. Similar view was expressed in **B.K. Narayana Pillai v. Parameswaran Pillai**.
34. Since the petitioner had already pleaded that the alienations made by respondent nos.1 and 3 in favour of respondent nos.4

to 18 are void *ab initio* and are not binding on her and a prayer to that effect has already been made in the plaint, addition of the words indicating that such alienations are also without legal necessity or family benefit cannot be said to be *mala fide* or that they would change the nature of the suit.

35. However, in view of the slight delay on the part of petitioner in seeking amendment of plaint, while allowing the Civil Revision Petition and setting aside the order dt.23.12.2014 in I.A.No.510 of 2014 in O.S.No.5 of 2011 on the file of VI Additional District Judge, Siddipet, the petitioner is directed to pay costs of Rs.1,000/- to respondents within a period of four (04) weeks from the date of receipt of a copy of this order. In default of payment of this cost, the Civil Revision Petition shall stand dismissed.

36. Accordingly, the Civil Revision Petition is allowed with costs.

37. Miscellaneous applications, pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14.10.2015

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