

HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.3654 of 2014

ORDER:

Defendants 1 and 2 in O.S.No.149/2010, on the file of the Court of the Additional Senior Civil Judge, Karimnagar are the petitioners in the present revision filed under Article 227 of the Constitution of India.

2. Challenge in the present revision is to the order passed by the said Court on 17.09.2014, dismissing I.A.No.112/2013 filed by the petitioners herein under the provisions of Order 6 Rule 17 of the Code of Civil Procedure (hereinafter called 'the Code').

3. Heard Sri Chetluru Sreenivas, learned counsel for the petitioners apart from perusing the material available before the Court.

4. First respondent herein instituted O.S.No.149/2010 against the petitioners and the second respondent herein, arraying them as defendants 1 to 3 respectively, seeking partition of the plaint schedule properties. In the said suit, the defendants/petitioners herein filed the written statement in the year 2010.

5. When the matter was coming up for cross-examination of the plaintiff, the petitioners herein filed present I.A.No.112/2013 under the provisions of Order 6 Rule 17 of the Code, seeking permission of the Court to amend the written statement. Plaintiff/first respondent herein resisted the said application by filing counter affidavit. The learned Senior Civil Judge, by way of an order dated 17.09.2014, dismissed the said application filed by the petitioners herein.

6. Calling in question the legal sustainability of the said order, the present revision has been filed by the defendants 1 and 2.

7. It is contended by the learned counsel for the petitioners that the order passed by the learned Additional Senior Civil Judge, Karimnagar is erroneous, contrary to law and is opposed to the very spirit and object

of the provisions of Order 6 Rule 17 of the Code. It is further contended by the learned counsel that had the contents of the affidavit filed in support of the application been considered from proper perspective, the order impugned in the present revision would not have emanated. It is nextly contended by the learned counsel that the Court below grossly erred in refusing to exercise the jurisdiction vested in it. It is further contended by the learned counsel that the learned Senior Civil Judge erred in holding that the proposed amendments would amount to withdrawal of the admissions made in the original written statement. It is further argued by the learned counsel that the learned Senior Civil Judge is not correct in holding that the application is a belated one and is an afterthought.

To bolster his submissions, learned counsel for the petitioners places reliance on the judgment in **CHANDAN HAZARIKA VS. BANTI BHUYAN**^[1] wherein the Hon'ble Apex Court held that proposed amendment based on two different pleas can be allowed if no prejudice is caused to the opposite party by the said amendment.

8. In the above background, now the issues that emerge for consideration of this Court are:

1. Whether the order under challenge in the present revision is in conformity with the provisions of Order 6 Rule 17 of the Code of Civil Procedure? and
2. Whether the order under revision warrants any correction by this Court under Article 227 of the Constitution of India?

9. The first respondent instituted the suit, being O.S.No.149/2010, against the petitioners and the second respondent herein, arraying them as D1 to D.3, for partition of the suit schedule 'A' to 'H' properties. The defendants/petitioners herein filed a written statement, resisting the said suit. When the suit after filing of chief affidavit was coming up for cross-examination of the plaintiff, the defendants filed the present I.A.No.112/2013 on 07.02.2013 under Order 6 Rule 17 of the Code,

seeking amendment of the written statement in the name of supplying better particulars, obviously, with regard to the plaint schedule properties. First respondent/plaintiff filed a written statement, opposing the said application stating *inter alia* that the defendants did not file documents in support of their version and the amendment of the written statement cannot be permitted at the stage of cross-examination of PW.1.

10. For the purpose of determining as to whether defendants/petitioners herein are entitled for the relief under Order 6 Rule 17 of the Code and for having their pleadings amended, it may be appropriate and proper to look into the original and proposed pleadings, which read as *infra* :

Schedule	Extent Ac. Gts	Original pleadings	Proposed pleadings
‘A’ S.No.1285/B	0-38	Joint properties of plaintiff, D1 and D.2	Same, no change
‘B’ S.No.1290/D	04-00	Joint properties of Plaintiff, D1 and D.2	Same, no change
“C” S.No.1332	0-11 ½	Joint properties of Plaintiff, D1 and D.2	Same, no change

‘D’ S.No.1334/A	0-14	It is pleaded in the written statement that ‘D’ schedule property was given to the defendant as Jesta Palu	During his life time Sri Kommula Venkata Reddy, father of the plaintiff & D.1 and husband of D.2 partitioned the lands and Sy.No.1334/A admeasuring Ac.0-14 gts was allotted to the share of the parents for maintenance and they are given liberty to give their share to anybody who will look after them in old age.
‘E’ S.No.1432/B	0-02	In the written statement it is stated that this property is a joint family property.	During his life time Sri Kommula Venkata Reddy, father of the plaintiff & D.1 and husband of D.2 partitioned the lands in suy.No.1432/B admeasuring Ac.0-02 gts was allotted to the share of the parents for maintenance and they are given liberty to give their share to anybody who will look after them in old age.

‘F’ S.No.1376/B	01-33	In the written statement it is stated that this was given to the first defendant as the plaintiff individually sold the joint family land of Ac.1-13 gts in S.No.1280/D and Ac.0-20 gts in Sy.No.1429 for his personal expenses when D.1 was in Gulf.	This is a joint family property.
‘G’ Sy.No.1410/B	01-20	In the original written statement it is stated that this property does not belong to the parties family but belongs to others.	Same, no change
‘H’ Sy.No.1406	0-37	In the original written statement it is stated that 20 years back Government acquired 20 gts and only 0-07 gts of land remains.	No land is available and the entire land is acquired.

11. From a bare perusal of the particulars stated supra, it is quite limpid that insofar as schedules ‘A’, ‘B’, ‘C’ and ‘G’ obviously no amendments are sought. In respect of ‘D’ schedule, it is the original plea in the written statement that it was given to the first defendant as “Jesta Palu” and the proposed amendment is to the effect that in the partition this was allotted to the parent’s share for their maintenance with a liberty to them to give the same to anybody who would look after them in old age. In respect of ‘E’ schedule property, it is the initial plea that this property is a joint family property and the proposed amendment is the same as in respect of ‘D’ schedule property. In respect of ‘F’

schedule property, it is the initial plea in the written statement that this was given to the first defendant exclusively, but now by way of proposed amendment, it is sought to be stated that it is a joint family property. In respect of

‘H’ schedule property, it is stated initially in the written statement that 20 years back the Government acquired 0-30 gts of land and only 0-07 gts of land remains and the proposed amendment is to the effect that the entire land is acquired.

12. In the affidavit filed in support of the present application, it is the case of the petitioners herein that their previous counsel could not represent their case as per the instructions given and wrongly filed the written statement, as such, they engaged the present counsel.

13. It is a settled and well established proposition of law that the Courts are required to be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. It is also equally well settled principle of law that a prayer for amendment of the plaint and prayer for amendment of written statement stands on a different footing. The Hon’ble Apex Court in ***USHA BALASHAHEB SWAMI v. KIRAN APPASO SWAMI***^[2] held that “the addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable”. In the said Judgment the Hon’ble Apex Court also held that “in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case”. In ***L.J. LEACH AND CO. LTD. V. JARDINE SKINNER AND CO.***^[3] the Hon’ble Apex Court held “that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice.”

14. In the case of **MA SHWE MYA v. MAUNG MO HNAUNG**^[4] the Hon'ble Privy Council held that "rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit".

15. It is appropriate to refer to the Judgment of the Hon'ble Apex Court in **BALDEV SINGH AND ORS. v. MANOHAR SINGH AND ANR.**^[5] wherein the Hon'ble Apex Court at paragraph 16 held as under:

"16. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 of the Code of Civil Procedure 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 hereinafter, 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 of the Code of Civil Procedure which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement of any stage of the proceedings. For the reasons aforesaid, we are of the view that the High Court as well as the trial court erred in rejecting the application for amendment of written statement. Accordingly, the orders of the High Court and the trial court are set aside, the application for amendment of written statement is allowed. The Defendants/Appellants are directed to file an amended written statement within a period of one month from the date of production of this order before the trial court to

dispose of the suit within a period of one year from the date of communication of this order to it. The appeals are allowed. There will be no order as to costs.”

16. It may be appropriate to refer to the judgment of this Court in **VOJJALA JAYAMMA v. VOJJALA PULLAIAH**^[6] wherein this Court held that since only chief affidavit is filed, it cannot be said that the trial has commenced, as such, the proviso to order 6 Rule 17 has no application.

17. Order 6 Rule 17 is intended for the purpose of determining real question of controversy between the parties.

18. From the material available, this Court is of the definite opinion that the proposed amendments would not change the nature of the suit nor the cause of action. A perusal of the order passed by the Court below which is under revision before this Court, shows that the Court below refused the relief mainly on three grounds, they are 1) proposed amendment would amount to withdrawal of admissions made in the original written statement;

2) after commencement of trial the amendment is not permissible; and
3) application is a belated one.

19. The principles laid down in the above referred judgments clearly demonstrate that the defendant is entitled to take even inconsistent pleas and only exception for the same is the amendment permitted should not cause any prejudice to the other side. In the considered opinion of this Court, by permitting the amendment, the plaintiff would not suffer any prejudice. Therefore, the said objection is unsustainable. The other ground assigned by the Court below that the application is a belated one is also unsustainable as the delay alone cannot be the sole criteria for consideration of the amendment application, if the proposed amendments are required for determination of the issues in the suit. In the instant case, trial had already commenced and the matter is coming up for cross examination of PW.1. It is the plea of the petitioners herein

that despite furnishing the information, the same was not properly placed before the Court by their counsel. In the definite opinion of this Court, the said reason cannot be completely brushed aside. Another significant aspect which needs mention at this juncture is that the suit in the instant case is a suit for partition and there must be complete finality for the issues in the matters of this nature, as such, on the said ground also this Court is inclined to accede to the request of the petitioners herein. The rigor of the proviso to Order 6 Rule 17 of the Code cannot be applied to the present case, as in the present case, the suit is only coming up for

cross-examination of PW.1 and no cross-examination has yet commenced as per the material available.

20. For the aforesaid reasons, the revision is allowed, setting aside the order dated 17.09.2014 passed in I.A.No.112/2013 by the learned Additional Senior Civil Judge, Karimnagar and consequently I.A.112/2013 stands allowed. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: .02.2015

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HON'BLE SRI JUSTICE A.V.SESHA SAI

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Between:

Kommula Bhoom Reddy s/o late Venkat Reddy,
Aged 50 years, Occ: Agriculture,
R/o Choppadandi village and Mandal,
Karimnagar District and another. ... Petitioners

and

Kommula Narasimha Reddy S/o late Venkat Reddy,
Aged about 50 years, Occ: Agriculture,
R/o Choppadandi village and Mandal,
Karimnagar District and another. ... Respondents

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HON'BLE SRI JUSTICE A.V.SESHA SAI

PD judgment in

CIVIL REVISION PETITION No.3654 of 2014

[\[1\]](#) (2003) 10 SCC 242

[\[2\]](#) AIR 2007 SC 1663

[\[3\]](#) 1957 1 SCR 438

[\[4\]](#) AIR 1922 PC 249

[\[5\]](#) 2006 AIR SC 2832

[\[6\]](#) 2007 (6) ALD 213 = 2007 5 ALT 597