

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.5802 of 2012

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ORDER

Plaintiff in O.S.No.40 of 2006 on the file of the Court of Principal Junior Civil Judge at Huzurabad, Karimnagar District, is the petitioner in the present revision filed under Article 227 of the Constitution of India. The present revision challenges the order dated 10.10.2012 passed by the said Court, dismissing I.A.No.696 of 2012 filed by the plaintiff/petitioner herein under the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter called 'the Code').

2. Heard Sri P. Sadasiva Rao, learned counsel for the petitioner and Sri Ch. Pratap, learned counsel for the respondent apart from perusing the material available before this Court.

3. Petitioner herein instituted O.S.No.40 of 2006 on the file of the Court of Principal Junior Civil Judge at Huzurabad, Karimnagar District, seeking perpetual injunction in respect of the suit schedule property, admeasuring Ac.0.24 gts in Sy.Nos.590/B1 (Ac.0.13 gts) and Sy.No.590/B2 (Ac.0.11 gts) showing the following boundaries for the said landed property;

East: Land of Goli Shyamsunder Reddy

West: Road

North: Land of Edavelli Praveen Reddy

South: R & B Road, Elkathurthy to Siddipet.

4. Resisting the said suit, the defendant/respondent herein filed a written statement. In the said suit, the plaintiff/petitioner herein filed the instant I.A.No.696 of 2012 under the provisions of Order VI Rule 17 of the Code, seeking amendment of eastern and

western side boundaries of the suit schedule properties and the proposed amendment reads are as follows;

“Permit suit schedule for Ac.0.13 guntas in Sy.No.590/B1 and Ac.0.11 guntas in Sy.No.590/B2 for which common boundaries are mentioned in its place the following description may be added.

ii)i

Survey number Hectares	Extent	
590/B1	Ac.0.13 gts	Ac.0.13 gts
North: Edavelli Praveen Reddy land		
South:R & B road from Elkathurty to Siddipet		
East:Land of Kommidi Pulla Reddy		
West: Road (cart way)		

ii)(ii)

Survey number Hectares	Extent	
590/B2	Ac.0.11 gts	Ac.0.11 gts
North: Land of Edavelli Praveen Reddy		
South:R & B road from Elkathurty to Siddipet		
East:Agricultural land of Goli Shyamsunder Reddy & Goli Vasanth		
West:Land of Bommineni Papi Reddy”.		

5. The defendant/respondent herein resisted the said application by filing counter. The learned Junior Civil Judge, by way of an order dated 10.10.2012, dismissed the said application filed by the plaintiff/petitioner herein.

6. Calling in question the validity and the legal sustainability of the said order passed by the learned Junior Civil Judge, the present revision has been filed.

7. It is contended by the learned counsel for the

plaintiff/petitioner herein that the order passed by the Court below, which is impugned in the present revision, is erroneous, contrary to law and is opposed to the very spirit and the object of the provisions of Order VI 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 present application been considered from proper perspective, the order under revision would not have emanated. It is further contended that the proposed amendments would not change the nature of the suit nor would cause any prejudice to the other side. He nextly contends that the present application under Order VI Rule 17 of the Code, which is filed in pre-trial stage, is required to be considered liberally. It is submitted by the learned counsel that it is always open for the defendant/respondent herein to file a written statement for the proposed amendments. It is also submitted that if the proposed amendments are allowed, the cause of action would not alter.

8. In order to substantiate his contentions and submissions, learned counsel for the petitioner places reliance on the decisions of the Apex Court in **SAMPATH KUMAR v. AYYAKANNU**^[1]; and **RAJKUMAR GURAWARA (DEAD) THROUGH L.Rs v. M/S S.K.SARWAGI & COMPANY PRIVATE LIMITED**^[2]; and also the decisions of this Court in **T. ASWINI DESAI v. D. KOUNDINYA (DIED)**^[3] and **RAZIA SIRAJUDDIN v. ESKAY BUILDERS, HYDERABAD**^[4].

9. On the contrary, it is vehemently and strenuously argued by the learned counsel for the respondent that the Court below is perfectly justified in refusing the request of the petitioner herein for

amendment in the facts and circumstances of the case and there is no illegality nor any jurisdictional error in the order passed by the Court below, as such, the present revision is not maintainable. He nextly contends that if the proposed amendment is allowed, it would result in change of cause of action and would also cause prejudice to the defendant. It is also submitted by the learned counsel that as there is inconsistency in the pleadings now sought to be introduced, the amendment application cannot be considered at all. It is nextly contended by the learned counsel that the proposed amendments would undoubtedly change the nature of the suit. It is also contended by the learned counsel that in view of the dismissal of the injunction petition filed by the petitioner herein earlier, the petitioner is not entitled to any indulgence of this Court.

10. In support of his submissions, learned counsel for the defendant/respondent herein relies upon the decision of this Court in the case of **THE ESTATE OF SRI R. KRISHNA ETC., REP. BY SRI**

R. SRINIVASA SASTRY v. K. JANAKIRAM^[5]; and the decision of the Apex Court in **M/s. MODI SPINNING AND WEAVING MILLS COMPANY LTD., v. M/S.LADHA RAM AND COMPANY**^[6] and also the decision of this Court in **GORANTLA KONDALARAYUDU v. MARVEL ORGANICS, HARIPRASAD NAGAR, CHIRALA**^[7].

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

- (i) Whether the order under challenge is conformity with the provisions of Order VI Rule 17 of the Code?
- (ii) Whether the impugned order warrants any interference of this Court under Article 227 of the Constitution of India?

12. The information available before this Court manifestly discloses that the petitioner herein instituted the suit and the suit schedule property admeasuring Ac.0.24 gts is in two plots i.e., Ac.0.13 gts in Sy.No.590/B1 and Ac.0.11 gts in Sy.No.590/B2. In the affidavit filed in support of the present application, it is the case of the petitioner herein that the boundaries for the suit schedule property were initially shown as common boundaries mistakenly. It is the further case of the petitioner herein that there is a mistake in eastern and western boundaries for both the plots, but the land is the same. It is the further case of the petitioner herein that after finding that there was a mistake in boundaries, he approached his vendors for rectification of the same and got the said boundaries rectified through registered rectification deeds dated 21.09.2012 and 25.08.2012.

13. On the other hand, it is the case of the defendant/respondent herein that right from the beginning, he has been questioning the existence of the suit land within the boundaries as shown in the plaint schedule and if the proposed amendment is allowed, the nature of property shown in the schedule would get totally changed and it results in change of nature of suit also. It is also the case of the defendant that the amendment basing on rectification deeds cannot be allowed and he is disputing the title and possession of the plaintiff by virtue of the alleged sale deeds.

14. In **SAMPATH KUMAR's** case (1 supra), the Apex Court held as under;

“Order 6, Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings

at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed.

In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which

would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed”.

In **RAJKUMAR GURAWARA’s** case (2 supra), the Apex Court held as under;

“Originally, the appellant/plaintiff filed the suit for declaration of his exclusive right to do mining operation in the suit property. However, after impleadment of M/s.S.K.Sarwagi and Company as second defendant (first respondent herein) after closing of the evidence and during the course of argument, the plaintiff filed an application under Order VI Rule 17 read with 151 CPC for amendment of the plaint praying for possession over the plaint schedule mentioned property from the defendants and for grant of damages of Rs.5.00 lacs in favour of the plaintiff for their mining operations without consent of the plaintiff in the plaint schedule property. Though the learned Additional District Judge allowed the application for amendment on payment of cost of Rs.300/- the High Court in a civil revision filed under Article 227 of the Constitution of India set aside the same and dismissed the application for amendment which is the subject matter in this appeal. In order to consider whether the appellant/plaintiff has made out a case for amendment of his plaint, it is useful to refer Order VI Rule 17 CPC which reads 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.

The first part of the rule makes it abundantly clear that at any stage of the proceedings, parties are free to alter or amend

their pleadings as may be necessary for the purpose of determining the real questions in controversy. However, this rule is subject to proviso appended therein. The said rule with proviso again substituted by Act 22 of 2002 with effect from 01.07.2002 makes it clear that after the commencement of the trial, no application for amendment shall be allowed. However, if the parties to the proceedings are able to satisfy the Court that in spite of due diligence could not raise the issue before the commencement of trial and the Court satisfies their explanation amendment can be allowed even after commencement of the trial. To put it clear, Order VI Rule 17 CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso”.

In **T. ASWINI DESAI’s** case (3 supra) this Court held as under;

“As noted above, since the relief of partition is based on the same set of facts originally pleaded, it cannot be said that the proposed amendment either alters the character of the suit or introduces a new cause of action. On the other hand, it would avoid the multiplicity of proceedings as observed by the Supreme Court in the above decision. Such relief if added by way of amendment to plaint would not cause any prejudice to the defendants”.

In **RAZIA SIRAJUDDIN’s** case (4 supra) this Court held as under;

“The suit, as originally filed, was the one for the relief of perpetual injunction. The first respondent filed an application for amendment of the plaint, to incorporate the plea of specific performance. The petitioner opposed the same on three grounds, namely, limitation, purport of the agreement, and pecuniary jurisdiction of the trial Court. So far as the first

ground is concerned, the trial Court itself left that to be decided at the stage of trial and treated it as triable issue. It is always open to the petitioner to put forward his contention as to the limitation vis-à-vis the prayer that is incorporated through the amendment.

As regards the purport of the agreement, namely whether it was a developmental agreement or an agreement of sale, no final view can be expressed at this stage. By its very nature, that question needs recording of oral and documentary evidence and it would be possible for the Court to express any view only after the trial. Therefore, the plea raised by the petitioner in this regard cannot be sustained. Suffice it to say that it shall be open to both the parties to lead evidence in support of their respective pleas.

The learned counsel for the petitioner did not plead the question as to the pecuniary jurisdiction. In case the Court finds that as a consequence of the amendment, it loses pecuniary jurisdiction, it shall always be open to it, to return the plaint, to be presented before a proper Court. Inasmuch as the trial of the suit did not commence, the proviso to Order 6 Rule 17 CPC does not get attracted”.

15. Coming to the judgments, on which reliance is placed by the learned counsel for the respondent; in **R . KRISHNA’ s** case (5 supra), this Court held as under;

“In case where there is a conflict between the survey number and the boundaries the boundaries prevail. The extent is mentioned in the sale deed of the year 1933. In the 1975 suit two items have been relied upon and it is stated that the present schedule property is described as item No.50 of the plaint schedule in O.S.No.21/75. There may be a mistake with regard to the survey numbers in that suit. But that does not mean that the party is prevented from claiming the correct land. So long as boundaries are mentioned and the extent is given the boundaries will prevail. Mere change of survey number will not be of any consequence if the boundaries and extent are not changed. This is a matter to be gone into in a full dressed trial. The lower Court ought to have allowed the amendment and consider the same in the suit itself”.

In **M/s. MODI SPINNING AND WEAVING MILLS’s** case (6 supra), the Apex Court held as under;

“The High Court on revision affirmed the judgment of

the trial Court and said that by means of amendment the defendants wanted to introduce an entirely different case and if such amendments were permitted it would prejudice the other side”.

In **GORANTLA KONDALARAYUDU**'s case (7 supra), this Court held as under;

“The suit is for dissolution of partnership firm between the petitioner and the respondents and for accounts. These are the proposed amendments:

i) In para III(c) for the existing 5th line and 6th line, the following

shall be substituted;

“the plaintiff and the 2nd defendant have deposited Rs.15,000/-

each in the Bank and have given the same as security to the”

ii) After line No.11 in para III(c) add the following:

“and the said godown was also hypothecated to the A.P.S.F.C.

for obtaining financial assistance for purchase of machinery and working capital”

iii) In first line in page 3 for the existing words “The firm carried

on business” the following shall be substituted:

“The firm was to carry on business”

iv) For the existing last sentence in para III(d), the following shall be substituted:

“The amount of Rs.60,000/- is with the plaintiff and it is intact”

v) In page 6, para III(h), after the first word “Corporation” the following shall be inserted:

“and to release the godown which was given as security for obtaining financial assistance for purchase of machinery and working capital”

The respective paragraphs in which such amendments were marked clearly show that factually they are not only inconsistent but also an introduction of new facts. If the documents showed something else than the allegations in the plaint as above, only the respective paragraphs were the basis to the documents themselves. Thereby, the plaintiff wanted to delete or add certain things in the plaint which

should not only decide the truth but also change the nature of the pleadings to prejudice the defendants in regard to the defence already taken and the valuable admissions got by means of the pleas already existing. When the proposed amendments were really intended to remove any clerical errors by introducing or substituting new facts, there was no ground to reject the amendment. The question is not whether the amendments are intended to delay the matter. The question is whether the amendments were necessary and proper to be allowed. On the face of it, the proposed amendments were by way of explanatory notes or reply to the defence taken by the respondents regarding which the plaintiff could have approached the Court for leave to file additional pleadings under Order 8 Rule 9 CPC. They have not done so and the learned Subordinate Judge was justified in dismissing the application for amendment. There is no error either of jurisdiction or law in passing the order by the learned Subordinate Judge to interfere with the order under Section 115 CPC.

Order 8 Rule 9 of CPC should not be confused by reading together that it permits only addition written statement by way of pleadings. Because the expression used therein is that no pleading subsequent to written statement shall be filed meaning thereby both plaint and written statement. Pleadings shall mean plaint and written statement as per Order 6 Rule 1 CPC. In that context, the pleadings and additional pleadings in Order 8 Rule 9 include the additional plaint also which can be either called as rejoinder or the reply in its real consequences”.

From the principles laid down in the above referred judgments, it can now be safely concluded that the pre-trial amendments, which are required for determination of the real questions in controversy between the parties shall be permitted liberally.

16. In the present case, the proposed amendments are with regard to eastern and western side boundaries of the two plots of the plaint schedule properties. In respect of plot admeasuring Ac.0.13 gts situated in Sy.No.590/B1, the proposed amendment is being sought only in respect of eastern side boundary, and in respect of plot admeasuring Ac.0.11 gts in Sy.No.590/B2, the

proposed amendment is being sought only in respect of western side boundary. The object behind the provisions of Order VI Rule 17 of the Code is also to avoid multiplicity of litigation. The fact remains that in the instant case there is no change of extent of the land and there is no change of survey numbers also. It is significant to note that the trial in the present case has not yet commenced.

17. The provisions of Order VI Rule 17 of the Code empower and authorise the Courts to allow the amendments at any stage of the proceedings, if such, amendments are warranted and required for the purpose of determination of real questions in controversy. In the instant case, the proviso to Order VI Rule 17 of the Code, which prohibits filing of such application, after commencement of trial, would not get attracted since the trial in the instant case has not commenced in the present suit.

18. According to the information available before this Court furnished by the learned Advocates, only the chief-examination affidavit has been filed when the case is coming up for cross-examination of P.W.1. In this connection, it may be appropriate to refer to the judgment of this Court in the case of **VOJJALA JAYAMMA v. VOJJALA PULLAIAH**^[8], wherein this Hon'ble Court held that mere filing of chief affidavit cannot be construed as commencement of trial.

19. In the facts and circumstances of the case and taking into consideration the principles laid down in the above referred judgments, this Court is of the considered opinion that the proposed amendments would neither alter the nature of the suit

nor it would change the cause of action. On the other hand, the same would certainly avoid the multiplicity of proceedings. The judgments cited by the learned counsel for the respondent, in the facts and circumstances of the case, would not render any assistance to the respondent herein.

20. For the aforesaid reasons and having regard to the nature of controversy and taking into consideration the principles laid down in the above referred judgments, the Civil Revision Petition is allowed and consequently, I.A.No.696 of 2012 is also allowed. It is needless to observe that the defendant/respondent herein is entitled to file additional pleadings for the proposed amendments.

There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

A.V.SESHA SAI, J

20th February, 2015
sj

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[\[1\]](#) AIR 2002 SC 3369

[\[2\]](#) 2008(4)SCJ 680

[\[3\]](#) 2007(2) ALT 600

[\[4\]](#) 2009 (5) ALT 733

[\[5\]](#) 1993 ALT SUPP.(1) 338

[\[6\]](#) AIR 1977 SC 680(1)

[\[7\]](#) 1997(5) ALD 588

[\[8\]](#) 2007(6) ALD 213