

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

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**CIVIL REVISION PETITION No.3441 of 2015**

**ORDER:**

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This civil revision petition under Article 227 of the Constitution of India is directed against the orders dated 04.06.2015 of the learned Senior Civil Judge of Khammam passed in IA.No.1041 of 2014 in OS.No.468 of 2007 filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) and Rule 18 of Civil Rules of Practice for permission to the 2<sup>nd</sup> plaintiff to amend the plaint as stated in the schedule annexed to the petition.

**2.** I have heard the submissions of the learned counsel for the revision petitioner/2<sup>nd</sup> plaintiff and the learned counsel for the respondents/defendants. I have perused the material record.

**3.** The facts leading to the filing of the present revision, in brief, are as follows:

The sole plaintiff (since died) had originally brought the suit for specific performance and a perpetual injunction. At the stage of numbering of the suit, the office of the trial Court had taken an objection in regard to the maintainability of the suit and the jurisdiction of the Court as the relief of specific performance was valued at Rs.5,000/-; accordingly, the plaint was returned with office objections in the said regard. The sole plaintiff (since died) had re-presented the plaint on 18.12.2007 clearly mentioning that the suit in so far as the relief of specific performance is withdrawn with a liberty to file a separate suit and that the suit may be continued insofar as the relief of perpetual injunction. The office objection was accordingly complied with and the plaint was re-presented. However, the plaint was again returned by the office of the trial Court directing the counsel to carry out corrections in the original plaint as well as the copies of the plaint. The counsel for the plaintiff had carried out the corrections by striking out the relief of specific

performance in paragraph 13 of the plaint and had re-presented the plaint on 27.12.2007. Thus, though the suit was originally filed for specific performance, after the objections that were taken by the office of the Court were complied with, the relief of specific performance was deleted and the suit insofar as the said relief was withdrawn with a liberty to institute a separate suit for the relief of specific performance and the suit was requested to be continued only in regard to the relief of perpetual injunction. Subsequently, the defendants had filed their written statement and resisted the suit. During the course of trial, after the evidence of the plaintiffs was closed and when the evidence of DW2 was in progress, the 2<sup>nd</sup> plaintiff who was already brought on record as the sole legal heir of the sole plaintiff had filed the instant application for amendment of the plaint to include the relief of specific performance. On the resistance of the defendants, the trial court, by the order impugned, had dismissed the said application for amendment. Therefore, the 2<sup>nd</sup> plaintiff is before this Court.

**4.** The learned counsel for the revision petitioner/2<sup>nd</sup> plaintiff would contend that the amendment sought for including the relief of specific performance would avoid multiplicity of litigation and that the inclusion of the said relief in the present suit by way of the amendment proposed is necessary for proper adjudication of the rights of the plaintiff and that as the suit was originally instituted for specific performance and as the relief of perpetual injunction is being sought based on the agreement for sale executed in favour of the father of the 2<sup>nd</sup> plaintiff in respect of the suit schedule land, the trial Court ought to have allowed the amendment as prayed for keeping in view the fact that the suit was originally instituted for specific performance and as the proposed amendment is not going to either change the nature of the suit or cause prejudice to the defendants.

**5.** On the other hand, the learned counsel for the defendants while supporting the order of the court below had contended as under: "The suit was originally instituted for specific performance and perpetual injunction. At the stage of numbering of the suit, while answering the objections taken by

the office of the Court, the sole plaintiff (since died) had voluntarily restricted the suit to the relief of perpetual injunction by withdrawing the suit insofar as the relief of specific performance by reserving a right to bring a separate suit for specific performance. Now, after the trial had made progress, an application in IA.No.245 of 2013 was earlier filed by the 2<sup>nd</sup> plaintiff under Section 151 of the Code to treat the suit as one for specific performance; but that application was dismissed by the trial Court; and a revision in CRP.No.208 of 2014 preferred before this Court was withdrawn by submitting that it is appropriate to file an application for amendment in stead of filing an application under Section 151 of the Code. Accordingly, this Court had dismissed the CRP as withdrawn with liberty to the 2<sup>nd</sup> plaintiff to file an application for amendment. Therefore, the present application was filed after the trial had commenced. This application for amendment changes the cause of action and affects the jurisdiction of the Court. In the affidavit filed in support of the petition seeking the proposed amendment a false averment is made that the deletion of the relief of specific performance is not to the knowledge of the 2<sup>nd</sup> plaintiff. In view of the proviso to Order VI Rule 17, which is squarely attracted to the case on hand, the amendment cannot be permitted.

**6.** I have bestowed my attention to the facts and I have given earnest consideration to the submissions. The facts which lead to the filing of the application for amendment of the plaint by the 2<sup>nd</sup> plaintiff are already stated supra, in detail. The fact remains that the sole plaintiff (since died) having originally instituted the suit for specific performance and perpetual injunction, on the return of the plaint by the trial Court with office objections in regard to the maintainability of the suit and the jurisdiction of the Court, had got deleted the relief of specific performance in the relief portion and restricted the suit for perpetual injunction specifically reserving a right to file a suit for specific performance. Thus, at the stage of numbering of the suit itself, while answering the objections taken by the office of the Court, the sole plaintiff (since died) had voluntarily restricted the suit to the relief of perpetual injunction by withdrawing the suit insofar as the relief of specific performance

by reserving a right to bring a separate suit for specific performance. The sole plaintiff (since died) was examined as PW1 and in her cross examination it was brought to her notice that the suit for perpetual injunction without seeking the relief of specific performance is not maintainable. Subsequently, PW2 was examined and even thereafter no prompt attempt was made with due diligence for seeking the amendment of the plaint to include the relief of specific performance. Further, after the trial had made progress, an application in IA.No.245 of 2013 was earlier filed by the 2<sup>nd</sup> plaintiff under Section 151 of the Code to treat the suit as one for specific performance; but that application was dismissed by the trial Court; and a revision in CRP.No.208 of 2014 preferred before this Court was withdrawn by submitting that it is appropriate to file an application for amendment in stead of filing an application under Section 151 of the Code. Accordingly, this Court had dismissed the CRP as withdrawn with liberty to the 2<sup>nd</sup> plaintiff to file an application for amendment. Therefore, the contention now sought to be advanced by the revision petitioners/2<sup>nd</sup> plaintiff that the deletion of relief of specific performance was not known till IA.No.1789 of 2012 was filed requesting the Court to frame an additional issue and that the 2<sup>nd</sup> plaintiff is not aware of the deletion of the relief of specific performance in the original suit earlier thereto cannot be countenanced. Subsequently, the instant application was filed for amendment of the plaint that too at a stage when the evidence on the side of the defendants was in progress. The *proviso* to Order VI Rule 17 of the Code reads as follows:

***‘Provided that no application for amendment shall be allowed after the trial was 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.’***

In view of the facts and the chronology of events and the *proviso* of Order VI Rule 17 of the Code, which is squarely attracted to the facts of the case, and in view of the conduct of the 2<sup>nd</sup> plaintiff in stating incorrect averments in the affidavit filed in support of the petition seeking amendment, this Court is of the well considered view that the amendment sought for including the relief of

specific performance cannot be permitted and the 2<sup>nd</sup> plaintiff is not entitled to the relief claimed in the application.

7. In **VIDYABAI V/s. PADMALATHA**<sup>[1]</sup> the Hon'ble Supreme Court observed that the proviso to Order VI Rule 17 is couched in a mandatory form and, therefore, the court's jurisdiction to allow an application for amendment is taken away there under unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. The Supreme Court observed that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties and only if such condition is fulfilled, the amendment is to be allowed. Thus, the proviso appended to Order VI Rule 17 of the Code was held to restrict the power of the Court and that it placed an embargo on exercise of its jurisdiction and unless the jurisdictional fact as envisaged therein, is found to exist, the court would have no jurisdiction at all to allow the amendment. In **REVAJEETU BUILDERS V/s NARAYANA SWAMY**<sup>[2]</sup>, on an analysis of English and Indian case law, the Supreme Court carved out the following principles which should weigh with the Court while dealing with an 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.**

The Supreme Court, however, clarified that the above principles are illustrative and not exhaustive.

8. Having regard to the reasons and the legal position obtaining and applicable to the facts of the case, this Court is satisfied that the trial Court is justified in dismissing the application and that, therefore, the order impugned does not call for any interference.

9. In the result, the Civil Revision Petition is dismissed at the stage of admission. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this CRP shall stand closed.

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**M. SEETHARAMA MURTI, J**

08<sup>th</sup> September, 2015  
Vjl

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[\[1\]](#) (2009) 2 Supreme Court Cases 409

[\[2\]](#) (2009) 10 SCC 84