

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2538 of 2014

ORDER:

Aggrieved by the order dated 03.07.2014 passed in I.A.No.377 of 2014 in O.S.No.256 of 2005 on the file of the Principal Junior Civil Judge, Nandyal, the present Civil Revision Petition is filed by the defendant Nos.1 to 3 therein under Article 227 of the Constitution of India.

The facts in issue are as under:

The petitioners, who are the defendant Nos.1 to 3 in the suit filed a petition under Order 6 Rule 17 and Section 151 of C.P.C. read with Rule 28 of Civil Rules of Practice, seeking amendment of written statement pleadings. After hearing both sides, the learned Principal Junior Civil Judge dismissed the said petition. Challenging the same the present revision is filed.

The averments in the affidavit filed in support of the petition would show that the plaintiffs filed a suit for permanent injunction as well as mandatory injunction and the same is posted for evidence. It is said that at the time of preparing the written statement, due to oversight, it was mentioned that there was a oral partition between defendant No.1 and his brothers Eswar Reddy and Busi Reddy but failed to mention about the partition being reduced into writing on a stamp papers on 09.04.1978. The said document could not be traced out at the time of drafting the written statement and it was mentioned in the written statement as if there was only an oral partition. It is stated that in order to avoid confusion, it is necessary to amend the written statement by deleting the word "orally" in the line No.5,6,8 and 13 in Page No.2 of written statement and add that "the partition between Eswar Reddy, defendant Nos.1 and 2 and Sadasiva Reddy is reduced in writing on stamp paper on 09.04.1978.

Plaintiffs therein filed counter contending that the proposed amendment in withdrawing the word oral partition of 1975 and adding the words "written partition in the year 1978" changes the nature of whole issue. It is contended that the oral partition was among three persons where as the written partition of

1978 was among four persons, as such both are contrary to each other. The suit is at the stage of cross examination of DW1. It is further contended that at a belated stage the defendants intended to create a new case by introducing a partition deed dated 09.04.1978 which changes the total nature of case of defendants primarily.

After hearing both sides the learned Principal Junior Civil Judge, dismissed the said petition. Challenging the same the present revision is filed.

Heard learned counsel for the petitioners and learned counsel for the respondents.

The material placed before the Court would show that the plaintiffs filed a suit for permanent injunction as well as mandatory injunction. When the case was coming up for cross examination of DW.1, the defendants filed a petition under Order 6 Rule 17 of C.P.C. seeking amendment of the written statement pleadings along with a petition to receive the documents including the partition deed which was reduced in writing on 09.04.1978. The Court while allowing the application for receiving the documents rejected the request for amendment of written statement. The question is whether it is just and necessary to allow amendment of written statement at this stage of the case.

In *Rajesh Kumar Agarwal vs. Rajmala Exports Private Limited and others* the Apex Court while considering the application for amendment held that the Court should not go into the correctness or falsity of the proposed amendment and should not record a finding on the merits of the pleas sought to be incorporated by way of amendment.

Therefore, it may not be necessary for the Court to go into the merits or demerits in respect of the contentions with regard to the amendments proposed to be made by the defendants to the written statement and the only point that would arise for consideration is whether the amendment would determine the controversies between the parties and avoid multiplicity of litigation?

Order 6 Rule 17 of C.P.C. which deals with amendment of pleadings states that 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.

In Baldev Singh and others etc. v. Manohar Singh and another the Apex Court held as under:

“From a bare perusal of this provision, it is pellucid that **Order 6 Rule 17** of the Code of Civil Procedure consists of two parts. The first part is that the court may at any stage of the proceedings allow either party to amend his pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies rose between the parties. Therefore, in view of the provisions made under **Order 6 Rule 17** CPC, it cannot be doubted that wide power and unfettered discretion has been conferred on the court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the court shall allow amendment of pleadings if it finds that delay in disposal of suit can be avoided and that the suit can be disposed of expeditiously.”

The suit is a permanent injunction. The petition filed by the defendants to receive the documents along with the written partition deed dated 09.04.1978 was allowed on 12.03.2014 vide I.A.No.224 of 2014. As seen from the record, the suit is posted for the cross examination of DW.1. Such being the position, no prejudice would be caused to the plaintiffs if the said amendment is allowed as the plaintiffs can always question the witnesses about the genuinty and authenticity of the document including execution of the said document.

For the aforesaid reasons, I 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 C.P.C. which confers power to allow amendment to the written statement at any stage of the proceedings. Accordingly, the Civil Revision Petition is allowed.

There shall be no order as to costs.

The miscellaneous petitions, if any pending, in this Civil Revision Petition shall stand closed.

C. PRAVEEN KUMAR, J

07.04.2015

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