

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08..11.**2016**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

Application Nos.8172 to 8174 of 2014

in

C.S.No.33 of 2011

V.Padmanabha Kulasekara Doss

@ P.K.Doss

.. Applicant in all
the applications

vs

V.Sridharan

.. Respondent in all
the applications

Prayer: Applications filed under Order XIV Rule 8 of O.S.Rules r/w Order VI Rule 17 of the Code of Civil Procedure seeking permission to make the following amendments to the additional written statement, viz.,

(i) **Application No.8172 of 2014** - to add the following amendment as para No.12 of the additional written statement, viz., the plaint should be rejected, in view of the fact Letters of Administration were issued by this Court vide its judgment dated 15th June 2010 in TOS No.34 of 2005 to the plaintiff for administering of all the legacies mentioned in the Will and the plaintiff ought to have sought for administration of all the legacies as ordered in the Will and not for the legacy conferred on the plaintiff alone",

(ii) **Application No.8173 of 2014** - to add the following amendment as para No.13 of the additional written statement, viz., the cause of action as stated in the plaint be not treated as cryptic as it fails to comply with Order VII Rule 11(a) of CPC, since the actual measurement in respect of the suit property being only 80 feet North to South and to give effect to legacies as per the Will 82.5 feet is required in North to South, which does not exist.

(iii) **Application No.8174 of 2014** - to add the following amendment as para No.14 of the additional written statement, viz., the plaintiff with a prayer for recovery of the front portion of the suit property should not be rejected since being well aware of the contents of the Will the defendant and plaintiff renounced the rights as contained in the Will and the family arrangement was entered into between the defendant and the plaintiff in the year 1990 at the instance of the mother of defendant and plaintiff altering the disposition made under the Will giving the front portion to the defendant and rear portion to the plaintiff and as the defendant is continuing in possession of the front portion from the

For Applicants : Mr.Audiseshan
in all the
applications

For Respondents: Mr.J.Sundarakanchani
in all the
applications

COMMON ORDER

The defendant is the applicant, who has filed the above applications to permit him to make amendments in the additional written statement, which has already been filed.

2. For the sake of convenience, the parties are referred to here under according to their litigative status and ranking in the suit.

3. The plaintiff and the defendant are brothers. The suit is filed for

recovery of possession from the defendant and for damages for use and occupation. The father of the plaintiff and the defendant died on 08.08.1987, leaving a Will behind. O.P.No.108 of 2005 was filed by the plaintiff for grant of Letters of Administration. As caveat was filed by the defendant, the said original petition was converted into TOS No.34 of 2005 and the same was allowed on 15.06.2010. After the Letters of Administration was granted, the present suit was filed by the plaintiff for recovery of possession in respect of the property allotted to him, under the Will.

4. Now, the defendant has filed the following amendment applications:

(a) In the amendment application filed by the defendant in **A.No.8172 of 2016**, it is stated that the plaintiff cannot maintain the suit for recovery of possession as he should only follow the directions given in the TOS about administering of the legacies left by the testator.

(b) The second amendment sought for in **A.No.8173 of 2016**, relates to a factual detail with respect to the Will, in which the actual measurement of the land, in respect of the suit property has only 80 feet "North to South" but, as per the Will, the measurement comes to 82.5 feet. Therefore, the Will cannot be given effect to.

(c) The third amendment in **A.No.8174 of 2016** is with respect to

para No.4 of the additional written statement wherein, it is stated about the family arrangement that has been entered into between the plaintiff and the defendant, after the demise of their father. As per the said settlement, the defendant had to occupy the front portion and the plaintiff to occupy the rear portion of the suit property.

5. The aforesaid amendments sought for by the defendant is vehemently opposed by the plaintiff.

6. Heard both sides.

7. The issuance of grant of Letters of Administration in TOS No.34 of 2005 dated 15.06.2010 is admitted by both the parties. It is also admitted that there was no appeal against the same. The plaintiff seems to have issued a legal notice to deliver the portion of the property as per the bequest made. Since there was no response, another notice was also sent by the plaintiff. As the request of the plaintiff was not heeded to, the suit has been filed and at the fag end of trial, these applications have been filed by the defendant. However, it is admitted by the learned counsel for the defendant that the evidence is complete and the suit is posted for final arguments and only at that stage, these applications were numbered and the amendments to the additional written statement already filed, are sought for.

8. The amendments sought for by the defendant are on the merits of

the case, which can be urged even at the time of arguments. The said amendments are sought for on the factual details, which were available to the defendant, even at the time of the filing of the suit. Earlier, the defendant was allowed to file an additional written statement. Even at that point of time, the defendant could have added these details. Having failed to do so, after the evidence in the case is complete, the above applications have been filed, which cannot be allowed at the post trial stage.

9. The learned counsel for the defendant places reliance on the judgment of the Hon'ble Supreme Court reported in ***AIR 2006 SC 2832(1) [Baldev Singh and Others etc., vs. Manohar Singh and another etc.]*** and contended that it is open to the defendant to take inconsistent pleas in the written statement although the same may not be permissible in case of a plaint. However, in the very same judgment, the Hon'ble Supreme Court had held that commencement of trial as used in proviso must be understood in limited sense as meaning final hearing of suit, examination of witnesses, filing of documents and addressing of arguments. It is useful to extract the relevant portion of the said judgment.

"17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 of the CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already been 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 CPC, which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings."

10. On the facts of the said case, the parties were yet to file their documents and the suit was not on the verge of conclusion, whereas in the present suit, it is admittedly, trial is over and it is posted for arguments.

11. Reliance was also placed on **(2001) 2 SCC 472 [Ragu Thilak D.John vs. S.Rayappan and others]**, wherein it is held by the Hon'ble Supreme Court, that the amendment sought for could not be declined as the dominant purpose of allowing the amendment is to minimize the litigation. The said case is also not applicable to the facts of the present case, as admittedly all these amendments, which are now sought for by the defendant to be included in the additional written statement, were available to him even at the time of filing the original written statement. Further the amendments sought for are only in the form of argument in nature, which

can be done, even at the time of arguments.

12. On the other hand, the learned counsel for the plaintiff, placed reliance on the judgment of the Hon'ble Supreme Court reported in ***AIR 2009 SC 1433 [Vidyabai and Others vs. Padmalatha and another]***.

13. In the above judgment, it is specifically stated that amendment of pleadings shall not be allowed, when the trial of the suit has already commenced. Whereas in the case on hand, the trial has been completed. It is also held that it is the duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only, if such a condition is fulfilled, the amendment has to be allowed. Even otherwise, the proviso to Order VI Rule 17 of the Code of Civil Procedure, restricts the power of the Court and puts an embargo on the exercise of its jurisdiction. Once the trial is complete, the parties cannot be allowed to re-open the case by filing an amendment to the pleadings.

14. It is also to be seen that as per the Amendment Act 22 of 2002 w.e.f. 01.07.2002, after the commencement of trial, application for amendment shall not be allowed and only pre-trial amendments are liberally allowed, which are made prior to the commencement of the trial. There cannot be any post trial amendment, as the same would lead to re-opening of the case and there can be no end to such practice.

15. In this regard, the judgment of the Hon'ble Supreme Court reported in **(2002) 7 SCC 559 [Sampath Kumar vs. Ayyakannu and another]** can be usefully referred to:

"9. Order 6 Rule 17 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 the 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 straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

10. 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."

16. When the defendant has failed to adhere to the procedure at the appropriate time, he cannot be allowed to take advantage of his own fault, by way of allowing the amendments to the additional written statement.

17. It is also a well settled principle that, an amendment can be allowed only subject to certain conditions. If an amendment is allowed, it should not result in introducing a new cause of action, which would prejudice the other party and allowing of such an amendment application, defeats the law of limitation.

18. In the case on hand, the defendant having failed to satisfy the conditions prescribed under Order VI Rule 17 of the Code of Civil Procedure and also having failed to satisfy the Court on the merits of the amendments sought for; that, the amendments are one of post trial, the same cannot be entertained.

19. It is also seen from the records, that the defendant had filed the original written statement in March 2011 and the additional written statement in June 2011. The reply to the additional written statement was also filed by the plaintiff in July 2011. In such circumstances, the

amendments now sought for by the defendant is neither on the question of limitation nor on the question of jurisdiction, but, on the question of maintainability of the suit. According to the defendant, the suit is not maintainable based on the strength of the Letters of Administration granted by this Court. Though it was open to the defendant, to raise these objections either in the original written statement or in the additional written statement, which were filed as early as in the year 2011 and having failed to do so, the amendments now sought to be included in the additional written statement is wholly misconceived, and it is only an abuse of process of Court.

20. In view of the above, all these applications are dismissed.

vj2

08.11.2016

PUSHPA SATHYANARAYANA,J.,

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