

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No. 4088 OF 2016

ORDER:

1. This Civil Revision Petition is preferred by the petitioner, who was defendant No.1 in O.S. No.28 of 2007, filed by respondent No.1 herein, who was the plaintiff, on the file of the Court of Senior Civil Judge, Bobbili, Vijayanagaram District (for short, 'the trial Court').

2. The 1st respondent herein has filed I.A. No.874 of 2015 in O.S. No.28 of 2007 against the petitioner herein and respondents 2 to 11, who are formal parties, under Order VI Rule 17 C.P.C., seeking amendment of plaint. The trial Court had allowed the application. Feeling aggrieved by the orders of the trial Court, this Civil Revision Petition is preferred by the petitioner on various grounds.

3. The main submission of learned counsel for the revision petitioner is that the properties sought to be added in the suit of 1st respondent in O.S. No.28 of 2007 are his self acquired properties and there is no documentary evidence to show that those properties are joint family properties to include the same in plaint schedule and, therefore, the order passed by the learned Senior Civil Judge, for amending the plaint schedule, may be set-aside.

4. Learned counsel for the 1st respondent herein submits that the suit schedule properties shown in O.S. Nos.79 of 2011 and O.S. No.64 of 2013 were not the self acquired properties of the petitioner herein, as he was a minor by the date of acquiring those properties and he has no income for earning those properties. Therefore, the properties shown therein are the joint family properties, purchased out of joint family funds

and, therefore, all the properties must be added in the suit in O.S. No.28 of 2007 for proper adjudication.

5. Heard the arguments of both sides and perused the order, dated 09.06.2016, passed in I.A. No.874 of 2015 in O.S. No.28 of 2007 and the material available on record.

6. The points that arise for consideration in this Civil Revision Petition are:

- 1) Whether the impugned order passed by the learned Senior Civil Judge, Bobbili, in allowing the Interlocutory Application is suffering with any error or irregularity? and
- 2) Whether there are sufficient grounds to set-aside the order passed by the trial Court?

7. **POINT Nos.1 and 2:** Both the points go together. The case of the revision petitioner is that the properties sought to be added in the suit schedule are his self acquired properties as such they cannot be added in the plaint schedule for partition. The contention of 1st respondent is that the suit schedule properties are joint family properties and they are not self acquired properties of the revision petitioner. It is further contended that the petitioner has filed suits in O.S. Nos.79 of 2011 and O.S. No.64 of 2013 respectively, on the file of Junior Civil Judge, Salur against the 1st respondent herein and her husband seeking permanent injunction and since those properties were not shown in the plaint schedule, the alleged properties are to be added in the plaint schedule in O.S. No.28 of 2007 for effective adjudication of the partition suit.

8. Learned counsel for the 1st respondent, in support of his contention with regard to limitation in filing the amendment petition, placed reliance

on a decision of the Apex Court in ***Pankaja and another Vs. Yellappa and others***¹, wherein it was held as follows in Paragraphs 12 and 14:

“12. So far as the Court's jurisdiction to allow an amendment of pleadings is concerned there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permits, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.

13.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.”

9. With regard to the same proposition, learned counsel for the 1st respondent relied on a similar decision of the Apex Court in ***B.K. Narayana Pillai Vs. Parameswaran Pillai and another***², wherein it was held as follows in Paragraph 4:

“4. This Court in *A.K. Gupta & Sons Vs. Damodar Valley Corporation* {[1966] 1 SCR 796} held:

¹ AIR 2004 SC 4102 (1)

² 2000 (1) SCC 712

The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit or new case or cause of action is barred: *Weldon Vs. Neale* {(1887) 19 QBD 394}. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See *Charan Das Vs. Amir Khan* {AIR 1921 PC 50} and *L.J. Leach and Company Limited and another Vs. Jardine Skinner and Company* {[1957] 1 SCR 438}.

The principal reasons that have led to the rule last mentioned are, first, that the object of courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes {*Cropper Vs. Smith* (1884) 26 Ch.D. 700} and, secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended in *Kishandas Rupchand Vs. Rachappa Vithoba* {ILR (1909) 33 Bom. 644} approved in *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil* {[1957] 1 SCR 595}.

The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in *Cooke Vs. Gill* {(1873) 8 CP 107}, in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson Vs. Unicos Property Corporation Limited* {(1962) 2 All ER 24}, and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas': *Doman Vs. J. W. Ellis and Company Limited* {(1962) 1 All ER 303}. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

Again in *Smt. Ganga Bai Vs. Vijay Kumar and others*

{[1974] 3 SCR 882} this Court held:

"The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far reaching discretionary powers is governed by

judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court.”

In *Ganesh Trading Company Vs. Moji Ram* {[1978] 2 SCR

614} it was held:

“4. It is clear from the foregoing summary of the main rules of pleadings and provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the short coming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.”

The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of

which the original */is* was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which can not be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.”

10. In *Pankaja*¹, it was held by the Apex Court that even though the relief of amendment of pleadings is barred by limitation, it can be allowed in proper cases if it sub-serves the cause of justice and avoids further litigation. These decisions are aptly applicable to the present facts of the case, since the ends of justice would be met if the amendment is considered by adding all the properties in the 1st respondent's suit for partition.

11. In the instant case, the dispute, whether the properties sought to be added to the plaint schedule are the self acquired properties or joint family properties, is a question of fact and unless those properties are added, that question cannot be resolved. As rightly observed by the trial Court that the petitioner herein can cross-examine the 1st respondent to prove that the alleged suit schedule properties are his self acquired properties but not joint family properties.

12. In view of the facts and circumstances of the case, and in view of the principles laid down by the Apex Court in ***Pankaja***¹ and ***Parameswaran***², the delay in filing the Interlocutory Application for amendment of the plaint can be allowed as it sub-serves the ultimate cause of justice, and avoids further litigation. Hence, I do not see any valid ground to differ with the view taken by the trial Court in allowing the application filed, under Order VI Rule 17 of C.P.C., for adding some properties to the plaint schedule for effective adjudication in a partition suit.

13. Keeping in view the rationale in the above decisions, it can be safely concluded that this is a fit case where the amendment can be allowed for adding the properties to the plaint schedule. The order of the trial Court is in accordance with law. The first respondent filed the said suit, but she could not add all the properties in the plaint schedule which subsequently came to her notice. In the above decisions, the delay, if properly explained, is not fatal to the case to allow the amendment of plaint. Since some of the properties came to her knowledge when two suits were filed against her by the petitioner herein, she intended to add those properties in the plaint schedule. By virtue of allowing the amendment petition, the cause of action and the nature of suit were not changed. New case has not been introduced by way of amendment. The rights of the parties can be finally decided only when the properties are added to the plaint schedule, as there is already a *lis* pending with regard to permanent injunction between the petitioner and the first respondent. The petitioner has got ample opportunity to prove that the properties added in the plaint schedule are the self-acquired properties and the first respondent is also got a right to prove that they are ancestral properties of

the petitioner. These aspects can be proved during the trial, as such, amendment is essential for effective adjudication of the matter.

14. In the result, the Civil Revision Petition is dismissed. Accordingly, the trial Court is directed to dispose of the matter, expeditiously, since the suit pertains to the year 2007.

15. In consequence, miscellaneous petitions, if any, pending in this Revision Petition, shall stand dismissed as infructuous. No order as to costs.

Date: 17.09.2016.
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G. SHYAM PRASAD, J



HON'BLE SRI JUSTICE G. SHYAM PRASAD

147



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CIVIL REVISION PETITION No. 4088 OF 2016

Date.17.09.2016

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