

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2846 of 2013

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioners/plaintiffs is directed against the order dated 11.06.2013 of the learned IV Additional Junior Civil Judge, Kadapa passed in I.A.no.330 of 2013 in O.S.no.252 of 2011 filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to permit to amend the plaint by incorporating paragraph 9A after paragraph 9 and seek the further reliefs of declaration of title and recovery of possession of the suit schedule property besides other reliefs as stated in the affidavit and the petition list.

2. I have heard the submissions of the learned counsel for the revision petitioners/plaintiffs ('the plaintiffs', for brevity) and the learned counsel for the 1st respondent/1st defendant ('the defendants', for brevity). I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The plaintiffs, who are minors represented by a guardian appointed under a testament, brought the suit against the defendants for a perpetual injunction restraining the defendants 1 and 2 from alienating the plaint schedule properties against the interests of the plaintiffs and for costs. The suit schedule properties are (1) a RCC slabbed house property; and, (2) land of Ac.0.50 cents in Guduru village, Polam in Sy.no.97/1, both situate in Kadapa Municipal Corporation. During the pendency of the suit, the plaintiffs had filed the aforementioned IA seeking the amendment of the plaint. The said application was resisted by the defendants. On merits, the trial Court had dismissed the application of the plaintiffs. Therefore, the plaintiffs are before this Court.

4. The case of the plaintiffs in support of their request for amendment of

the plaint, in brief, is as follows:

The suit is originally filed for a perpetual injunction against the defendants 1 and 2 to restrain them from alienating the plaint schedule property against the interests of the plaintiffs. The 3rd defendant/respondent, who is the Sub-Registrar, Kadapa, is a pro-forma party. Since the 1st defendant is trying to sell away the plaint schedule property to some third parties under the guise of a pattedar passbook and as the plaintiffs would be put to great loss and much inconvenience in case of such alienations, it has become necessary for the plaintiffs to seek amendment of the plaint to claim the reliefs of declaration of title and delivery of possession.

5. The averments in the counter of the defendants, in brief, are as follows: 'The suit is originally filed only for an injunction to restrain the defendants 1 and 2 from alienating the suit schedule properties. However, by the proposed amendment, the plaintiffs are seeking the reliefs of declaration of title and recovery of possession merely on the ground that the 1st defendant is trying to sell away the suit schedule properties. An *ad interim* injunction order is in force. Therefore, the question of alienating the properties by the defendants 1 and 2 does not arise for consideration. The guardian of the plaintiffs by name M. Narasimhulu had filed the present suit with an oblique motive to knock away the suit schedule properties and harass the defendants 1 and 2. The facts of the case and the evidence already brought on record would disclose the said fact. The present application is filed at the fag end of the trial, that is, when the suit is at the stage of arguments. The petition seeking the proposed amendment is intended to delay the proceedings for one more year by securing transfer of the case to a higher Court on the ground of pecuniary jurisdiction. The grounds urged for seeking the proposed amendment are neither proper nor sufficient to grant the relief. The pleadings now sought to be raised are inconsistent and are contradictory to the original pleadings and are destructive in nature. Hence, the petition may be dismissed.'

6. The learned counsel for both the sides made submissions in line with the respective cases of the parties, which are stated supra.

7. The learned counsel for the plaintiffs would further submit that they are minors and that their case is being represented by a guardian who is appointed under a testament and that the trial Court had failed to consider that in his cross examination the 1st defendant had admitted that he has an intention to sell the property and that, therefore, it has become necessary for the plaintiffs to seek amendment of the plaint and that the 1st defendant in fact had stated in his evidence that he had already sold away the property and that, therefore, the plaintiffs are apprehending that if they do not seek appropriate reliefs by seeking the amendment of the plaint, there would be multiplicity of litigation. He would also submit that on the very same allegations, which are already made in the plaint, the amendment is being sought; and that neither the cause of action nor the nature of the suit is being changed by way of the proposed amendment; and that the trial Court by erroneous assumptions and surmises dismissed the application by erroneously holding that if the amendment is allowed it ousts its jurisdiction and that therefore, such an amendment should not be allowed; and that in the facts and circumstances of the case, if the amendment is permitted, no prejudice would be caused to the defendants 1 and 2; and that the proposed amendment is necessary for avoiding further litigation; and that in case the amendment is allowed, it would sub-serve the ultimate cause of justice; and that allowing of the amendment is in the larger interests of doing full and complete justice to the parties, particularly, the plaintiffs, who are minors; and that such amendment is necessary for determining the real questions in controversy between the parties and setting at rest the dispute once and for all.

8. The learned counsel for the defendants while supporting the orders of the Court below would submit that in view of the *proviso* to Order VI Rule 17 of the Code, the present application for amendment filed by the plaintiffs shall not be allowed as the trial had concluded and as the suit is at the stage of arguments and as the plaintiffs had failed to plead and prove that despite exercise of due diligence they could not have raised the matter related to amendment before the commencement of the trial.

9. I have bestowed my attention to the facts and the submissions. I have carefully gone through the copy of the plaint. It is profitable to first refer to the legal position obtaining.

In **J.Samuel and others v. Gattu Mahesh and others**^[1] the Supreme Court while dealing with an application for amendment had held as follows:

“In the given facts, there is a clear lack of “due diligence” and the mistake committed certainly does not come within the preview of a typographical error. The term “typographical error” is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.”

In **Rajkumar Gurawara (dead) through L.Rs v. S.Sarwagi and Company Private Limited and Another**^[2] the Supreme Court having referred to Order VI Rule 17 of the Code had held as follows:

“Further, it is relevant to point out that in the original suit, the plaintiff prayed for declaration of his exclusive right to do mining operations and to use and sell the suit schedule property and in the petition filed during the course of the arguments, he prayed for recovery of possession and damages from the second defendant. It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation.”

Before proceeding further, it is necessary to refer to the proviso to Order VI Rule 17 of the Code reads as under:

“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.”

In the decision in **VIDYABAI V/s. PADMALATHA**^[3] the Supreme Court observed that proviso to Order VI Rule 17 of the Code 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, and that before allowing amendment, the Court must come to a conclusion that in spite of due diligence the parties could not have

raised the matter before the commencement of the trial and 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 a 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 that 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**^[4], 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 were illustrative and not exhaustive.

In **CHANDER KANTA BANSAL V/s. RAJINDER SINGH**^[5], the Supreme Court, taking note of the fact that 'due diligence' has not been defined in the Code, referred to the dictionary meaning of 'diligence' which is to the effect that it means careful and persistent application or effort or a continual effort to accomplish something; care; caution; the attention and care required from a person in a given situation, and observed that 'due diligence' means the diligence reasonably expected from and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. Reference was also made to 'Words and Phrases' by Drain-Dyspnea (Permanent Edition 13-A) wherein 'due diligence' was defined in

law to mean doing everything reasonable and not everything possible. The Hon'ble Supreme Court, therefore, concluded that 'due diligence' would mean reasonable diligence and would mean such diligence as a prudent man would exercise in the conduct of his own affairs. Further, in the decision in **Abdul Rehman and Another v. Mohd. Ruldu and Others**^[6], the Supreme Court, having taken note of the above provision of law had laid down that it is clear that the parties to the suit are permitted to bring forward amendment of the pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them and that the Courts have to be liberal in accepting the same, if such application for amendment is made prior to the commencement of the trial and that if such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that, inspite of due diligence, the party could not have raised the matter before the commencement of the trial. In the above decision the Supreme Court reiterated the following proposition:

"All amendments which are necessary for the purpose of determining real questions of controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties."

In the above decision the Hon'ble Supreme Court further referred to the ratio in the decision in **Pankaja and another v. Yellapa**^[7], which runs as follows:

"If the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed."

In **Pankaja and another** (7 supra) the facts are as under: "As per the case of the plaintiffs, the defendant, in violation of the Court order, had further encroached into the suit property. Therefore, the plaintiffs sought for the amendment of the plaint for seeking the reliefs of declaration of ownership and possession of the said encroached area also. The said application was allowed by the trial Court. However, the Principal Civil Judge rejected the application for amendment on the ground that the application for amendment was filed at a belated stage. The High Court dismissed the revision on the

said ground and also on the ground that the amendment introduces a different relief than what was originally asked for. The Supreme Court permitted the amendment by allowing the appeals.

In **Sampath Kumar v. Ayyakannu and another**^[8] the facts and ratio are as under: "A suit was brought in the year 1988 for perpetual injunction in respect of an agricultural land. Before the commencement of the trial in the year 1999, the plaintiff moved the application for amendment of the plaint alleging that during the pendency of the suit, the defendant had forcibly disposed the plaintiff in the year 1989. On such averments the plaintiff sought for the relief of declaration of title to the suit property and consequential relief of recovery of possession. The defendant opposed the application of the plaintiff stating that he had perfected title to the property by adverse possession and that the suit is barred by law of limitation and that a valuable right that had accrued to the defendant is being sought to be taken away by proposed the amendment. The trial Court rejected the application for amendment observing that the appropriate course for the plaintiff was to bring a new suit. The High Court maintained the said order. The Supreme Court while allowing the appeal of the plaintiff had referred to its earlier decisions and had finally held as follows:

8. *Rukhmabai v. Lala Laxminaraya and Ors.*: [1960]2SCR253, this Court has taken the view that where a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so.

9. 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 amendment. 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.

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. (See observations in *Siddalingamma and Anr. v. Mamtha Shenoy*: AIR 2001 SC 2896).

11. 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.

10. Reverting to the instant case facts, what is to be noted is that the plaintiffs, who are minors, represented by a guardian had originally filed the suit for perpetual injunction to restrain the defendants 1 and 2 from alienating the plaint schedule properties. The plaintiffs submit that inspite of an injunction order and the relief sought in the suit, the 1st defendant in his deposition had stated that he had alienated the property and that he intends to alienate the properties and that in the circumstances of the case, if the amendment proposed is not sought and the reliefs as sought for by way of the proposed amendment are not claimed in the suit, there is likelihood of complex situations arising leading to multiplicity of litigations and that, therefore, to give a quietus to the dispute between the parties and have the

is adjudicated completely and effectively and to avoid further litigation, the plaintiffs are seeking the amendment and that in the facts and circumstances of the case, the seeking of reliefs of declaration of title and recovery of possession is imperative. Even as per the precedential guidance of the Supreme Court, an amendment can be permitted if it is intended to determine the real question in controversy; and, all amendments, which are necessary for the purpose of determining real questions of controversy between the parties, should be allowed if such amendments sought for do not change the basic nature of the suit. It is also pertinent to note that the plaintiffs are not precluded from bringing a fresh suit for declaration of title and recovery of the property based on the subsequent cause of action. A change in the nature of relief claimed shall not be considered as a change in the nature of suit, as per the settled legal position. The power of amendment should be exercised in the larger interests of doing full and complete justice between the parties and that all amendments, which are necessary for the purpose of determining the real question in controversy, should be allowed. Further, if the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed. The Court has also to consider whether the proposed amendment is intended to determine the real dispute between the parties. The law is well settled that all amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. If the amendment as proposed is allowed, no right accrued to the defendants would get defeated as the defendants 1 and 2 are denying the claims of the plaintiffs and are contending that the plaintiffs are not entitled to any reliefs. Further, as the refusal of the request seeking amendment does not preclude the plaintiffs from instituting a fresh suit, the refusal of the request leads to multiplicity of the litigation.

10.1 Dealing with the aspect that if the amendment is permitted and the suit is allowed to be converted from a suit for perpetual injunction into one for declaration of title, the trial Court will lose the jurisdiction to entertain the suit

and the jurisdiction of the trial Court would be ousted and that the trial Court would be compelled to return the plaint for presentation to a proper Court having pecuniary jurisdiction, what is to be noted is that on that ground an amendment cannot be refused. Whenever an amendment of the plaint is sought and on allowing such amendment which is permissible, the plaint might have to be returned for presentation to proper Court having higher pecuniary jurisdiction shall not have a bearing on the merits of the application filed for amendment. In such cases, the amendment should be permitted by allowing the application; further, after the amendment is carried out and neat copy of the plaint is filed after paying the additional Court fee, if any, payable in view of the enhanced valuation of the reliefs claimed in the suit, the Court shall return the plaint to the plaintiff for presentation to proper Court to which the suit would go after the amendment is allowed. The view of this Court gets reinforced from the ratio in the decision in **Makireddy Ramayamma v. Menti Kamalakara Rao** [AIR 1983 AP 11]. In this decision, this Court having noticed two divergent views earlier expressed by this Court, had held as follows:

In between the two conflicting views expressed by Ramachandra Rao, J., and Parthasarathi, J., I prefer to agree with the view expressed by Parthasarathi, J., as it is in accordance with the practice that is uniformly followed in the subordinate courts in matters of amendment of pleadings. When the suit which was originally filed could be tried by the District Munsif, it is only the District Munsif that is competent to decide whether the amendment applied for should be allowed or refused on merits. The consideration as to whether subsequent to the amendment the District Munsif would still continue to have pecuniary jurisdiction does not arise at that stage. If as a result of the amendment the suit valuation exceeds the pecuniary jurisdiction of the District Munsif, he would naturally return the plaint for presentation in the proper Court. It will not therefore be right for the District Munsif to refuse the amendment merely on the basis that if the amendment is allowed the suit would be beyond his pecuniary jurisdiction. The impugned order is accordingly set aside and the District Munsif is directed to permit the plaintiff to amend the plaint. It is open to the District Munsif if he is not satisfied with the valuation proposed by the plaintiff. To get the property valued. If on such revaluation he finds that he still has pecuniary jurisdiction, he will proceed with the trial of the suit after giving an opportunity to the defendant to file any additional written statement regarding the valuation of the property.

In the decision in **Mount Mary Enterprises v. Jivratna Medi Treat Private Limited**^[9] a similar contention that an amendment of the plaint cannot be rejected on the ground that upon enhancement of the valuation of

the suit property, the suit has to be transferred to a Court having a higher pecuniary jurisdiction was considered. The facts of the case show that in a suit for specific performance, the property had been under valued though the market value of the property was much higher and therefore, the defendant had taken an objection that the property was undervalued by the plaintiffs in the suit. The plaintiffs sought amendment of the plaint to incorporate the correct value of the property. In this background, the Supreme Court had held as follows:

“The main reasons assigned by the trial Court for rejection of the amendment application was that upon enhancement of the valuation of the suit property the suit was to be transferred to the High Court on its original side. In our view, that is not a reason for which the amendment application should have been rejected.”

Further the Supreme Court in **North Eastern Railway Admn. V. Bhagwan Das**^[10], having referred to a paragraph in the earlier decision, had held as follows:

“Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.”

Therefore, the trial Court, as rightly contended by the learned counsel for the plaintiffs, was in error in dismissing the amendment petition on the ground that if the amendment petition is allowed the jurisdiction of the Court would be ousted. Further the trial Court in its orders held that the admissions of DW1 in his evidence that he is intending to alienate the property will not prejudice the rights of the plaintiffs as any alienations pending suit would be hit by the principle enshrined in the doctrine of *lis pendens* as per the provision of Section 52 of the Transfer of Property Act also cannot be accepted as a valid reason for rejection of the application of the plaintiffs as the plaintiffs in view of the apprehension that if the property is alienated complex situations would

arise are seeking larger reliefs namely declaration of title and recovery of possession. Coming to the *proviso to Order VI Rule 17 of the Code*, in view of the decision of the Supreme Court in **Sampath Kumar** case, this Court finds that as the plaintiffs are seeking the reliefs of declaration of title and recovery of possession on the basic facts as pleaded in the plaint seeking relief of permanent prohibitory injunction and which is pending it would be a sound exercise of discretion to permit the amendment of the plaint to enable the plaintiffs to seek the reliefs of declaration of title and recovery of possession being sought for in the pending suit. Therefore, on the ground of delay, the amendment cannot be refused. Since the dominant purpose of the Rule is to minimise the litigation and to enable the parties to have all the issues relating to one dispute resolved in one suit, the amendment sought for by the plaintiff can be allowed, in the considered view of this Court. As rightly pointed out, the question whether the plaintiffs would be entitled to the reliefs now being claimed by way of proposed amendments cannot be prejudged while considering an application, which is filed for seeking the amendment of the plaint. In the well considered view of this Court, if the amendment is permitted though sought belatedly also helps in avoiding the multiplicity of the proceedings and in setting at rest the dispute between the parties once and for all. In order to avoid multiplicity of suits, it would be a sound exercise of discretion to permit the amendments being sought for in the pending suit. As per the precedential guidance, the well settled rule of practice is not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if the plaintiff seeks to do so. Therefore, for all the aforesaid reasons, granting of amendment of the plaint really sub-serves the ultimate cause of justice and avoids further litigation and therefore, the amendment sought for by the plaintiffs deserves to be allowed.

11. Viewed thus, this Court finds that the trial Court is not justified in dismissing the application of the plaintiffs and that, therefore, the order impugned warrants interference.

12. In the result, the Civil Revision Petition is allowed by setting aside the order impugned. As a sequel, I.A.no.330 of 2013 in O.S.no.252 of 2011

stands allowed. The trial Court shall now permit the plaintiffs to carry out the amendment of the plaint and pay the necessary deficit Court fee, if any payable, and to file a neat copy of the plaint. On filing of such neat copy of the plaint and payment of the necessary Court fee/deficit Court fee, the trial Court shall then return the plaint to the plaintiffs for presentation to proper Court to which the suit would go after the amendment is allowed.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

13th April, 2016
Vjl

[\[1\]](#) (2012) Supreme Court Cases 300

[\[2\]](#) (2008) 1 Supreme Court Cases 364

[\[3\]](#) (2009) 2 Supreme Court Cases 409

[\[4\]](#) (2009) 10 SCC 84

[\[5\]](#) (2008) 5 SCC 117

[\[6\]](#) 2013(1)ALD 1(SC)

[\[7\]](#) AIR 2004 SC 4102

[\[8\]](#) (2002) 7 SCC 559

[\[9\]](#) (2015) 4 Supreme Court Cases 182

[\[10\]](#) (2008) 8 SCC 511