

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No.2956 OF 2016**

**ORDER:**

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order dated 17.02.2016, in I.A. No.190 of 2015 in O.S. No.476 of 2008, passed by the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court at Hyderabad, whereby dismissed the petition filed by the revision petitioner herein.

02. The revision petitioner filed a petition in I.A. No.190 of 2015 under Rule 17 of Order VI of CPC in the suit filed for partition of the schedule property and for separate possession allotting due share to him alleging that the petitioner purchased the suit schedule property, by receiving nominal amount of Rs.1,00,000/- from the first defendant, while agreeing to pay remaining Rs.3,10,000/-. The revision petitioner has started constructed in the said property, and informed the same to the first defendant to send money for construction and in turn the first defendant expressed his inability. Hence, the plaintiff alone invested amount for completion of total construction. The total construction was completed by now. The first respondent herein did not contribute equal amount and denied the share of the petitioner. Hence, the revision petitioner filed the suit for partition of the schedule property into two shares and for allotment of one such share to him. It is the case of the revision petitioner that the first respondent executed gift settlement deed dated 16.11.2005 vide document No.3694 of 2005 transferring

the total property in favour of his wife without having any partition or title or ownership over the suit property which is illegal and the same is not binding on him. Hence, sought for relief of cancellation of gift settlement deed dated 16.11.2005.

03. The respondents filed counter denying the material allegations, accepting the legal correspondence between the revision petitioner and the first respondent and execution of gift settlement deed etc., while contending that the revision petitioner is not entitled for amendment of plaint, since the amendment would change the nature of the suit and prayed for dismissal of the petition.

04. Upon hearing the argument of both the counsel, the trial court dismissed the petition based on the principle laid down by this Court in **YANALA MALLESHWARI AND OTHERS V. ANANTHULA SAYAMMA AND OTHERS<sup>1</sup>**.

05. During hearing, Sri A.Suryanarayana, learned counsel for the revision petitioner, contended that instead of seeking declaration to declare the gift settlement deed dated 16.11.2005 as invalid and not binding, by mistake claimed relief of cancellation and the same can be treated as declaratory relief.

06. Whereas, learned counsel for the respondents supported the order in all respects.

07. Admittedly, original suit was filed for partition and separate possession, which is not governed by any provisions of the Specific Relief Act and the relief claimed for the amendment under Rule 17 of Order VI of CPC is governed by Section 31 of

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<sup>1</sup> 2006(6) ALT 523 (FB)

the Specific Relief Act, which can be claimed by a party to the document in view of the Judgment of this Court in **YANALA MALLESHWARI**'s case referred to supra and the Apex Court in wherein it was held that if a party to the document wanted to annul the document, he can file suit under Section 31 of the Specific Relief Act, if a person other than a party to the document wanted to annul the document, he has to file the suit for declaration under Section 34 of the Specific Relief Act.

08. In the present case, the petitioner is a third party to the document and at best, he is entitled to claim declaration in view of the principles laid down in the above two referred Judgments, but instead of seeking declaration, sought for cancellation of the document. But at the stage of consideration of application under Rule 17 of Order VI of CPC, merits of the proposed amendment cannot be gone into. The trial court based on the merits in the post amendment of CPC, dismissed the petition filed under Rule 17 of Order VI of CPC.

09. In any view of the matter, the points to be considered are, whether the proposed amendment would change the nature of the suit and whether the proposed amendment takes away the valuable right that accrued to the respondent or amounts to withdrawing the admission if any made, and that whether the proposed amendment would cause any prejudice to the respondent.

10. In the present case, the nature of the suit is changed, if the proposed amendment is allowed for cancellation of the document from the suit for partition and separate possession.

In such case, in view of the principles laid down by the Apex Court in **M/S. REVAJEETU BUILDERS & DEVELOPERS V. M/S. NARAYANASWAMY & SONS & ORS<sup>2</sup>**, and in **RAMESH KUMAR V RAJMALA EXPORTS PRIVATE LIMITED AND OTHERS<sup>3</sup>**, the guidelines laid down in **REVAJEETU BUILDER's** case were reiterated and held as follows:

“On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the 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. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are illustrative and not exhaustive”.

It is clear that if the proposed amendment allowed, i.e. conversion of the suit for partition into cancellation of deed, it would take away the valuable right that accrued to the respondents. Therefore, at this stage, the petitioner is not entitled to seek amendment. In view of my observation made hereinabove, the revision is liable to be dismissed.

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<sup>2</sup> 2009(10) SCC 84

<sup>3</sup> 2012 (4) ALT 1 (SC)

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11. In the result, the revision petition is dismissed. No costs. However, the revision petitioner may take appropriate action, if he is legally entitled for cancellation of gift/ settlement deed 16.11.2005, if permissible under law.

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

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**M. SATYANARAYANA MURTHY, J**

Date: 12.09.2016  
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