

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.476, 480 & 478 of 2016

COMMON ORDER:

These three Civil Revision Petitions filed under Article 227 of the Constitution of India by the unsuccessful respondent/plaintiff are directed against three separate orders made on the same day, 14.12.2015, by the learned Junior Civil Judge, Uravakonda of Anantapur District, in the three interlocutory applications, I.A.Nos.231, 229 and 230 of 2015, filed respectively for amendment of the written statement, reopening of evidence and receiving the document, certified copy of the registered partition deed dated 30.03.1984, executed amongst defendants 1 to 4 and their late father.

2. I have heard the submissions of *Sri Seshadri Goalla*, learned counsel for the revision petitioner/plaintiff (hereinafter, 'the plaintiff') and *Sri K.Venkatesulu*, learned counsel for the respondents/defendants 1 and 2 (hereinafter, 'the defendants 1 and 2'). I have perused the material record.

3. The basic facts, as per the submissions made by the learned counsel for the plaintiff and as could be culled out from the material on record, in brief, are as follows:

The plaintiff brought the suit for declaration of title and perpetual injunction in respect of an agricultural land. The defendants 1 and 2 and other defendants are resisting the suit by filing written statements. The trial of the suit was in progress. At that stage, the defendants 1 and 2 filed the aforementioned three applications. At present, the suit is at the stage of arguments.

4. The case of the defendants 1 and 2 in support of the requests made in the applications, in brief, is as follows:

On 30.03.1984, the father of the defendants 1 and 2 and their brothers partitioned land in an extent of Ac.0.90 cents out of the suit schedule survey number along with other lands in other survey numbers under the registered partition deed. By mistake and inadvertence, the existence of the said aspect is not pleaded in the written statement and the said document was not filed along with the written statement. The document will have a bearing on the issues involved in the suit as it traces the title of the defendants 1 and 2 and helps in disproving the title of the plaintiff. Hence, the said document is a crucial document to prove the case of the defendants 1 and 2. Therefore, it has become necessary for the defendants to have the matter reopened and seek amendment of the written statement to add a pleading in regard to the said document and to further file an application to grant leave to file the said document and receive the same on file by condoning the delay in filing the same. Hence, the three applications are filed.

5. *Per contra*, the case of the plaintiff in the counters filed in the instant applications, in brief, is as follows:

The allegations that the defendants 1 and 2, their brothers and father partitioned land in an extent of Ac.0.90 cents in the suit schedule survey number and other lands in other survey numbers vide partition deed dated 30.03.1984 and that by mistake and inadvertence, the said aspect is not pleaded in the written statement already filed by the defendants 1 and 2 and that the said document is not filed along with the written statement for the said reason and that the said document is a crucial document to prove the case of the defendants 1 and 2 and disprove the case of the plaintiff are all false. In the written statement already filed, a specific plea is taken that the suit schedule property is inherited by the defendants 1 and 2, the legal heirs of Madineni Papanna, their grandfather. Further, in the cross-examination, the 1st defendant/ DW1 deposed that their grandfather is Madineni Subbanna and that about 70 years back, their father purchased an extent of Ac.01.25 cents

from out of the suit schedule property from the said Papanna by way of sale agreement and that the said sale agreement is available with him and that he informed the said fact to his counsel and that except the said document, he has no other document in regard to their right over the plaint schedule property. In view of the said pleading already taken in the written statement and the evidence given before the trial Court by DW1, the question of pleading about a partition deed and filing the said partition deed at this stage does not arise and the said proposed amendment cannot be permitted and the said partition deed cannot be permitted to be filed as the proposed pleading is contrary to the original pleadings and changes the nature of the defence and helps the defendants in patching up their case. There is no mention about the alleged partition deed and its contents till the present three applications are filed by the defendants 1 and 2. It is only pleaded in the written statement that they are having right to the property in an extent of Ac.2.57 ½ cents allotted to the share of Madineni Papanna and the same devolved upon his only brother Subbanna; but, in the evidence of DW1, it is stated that his father purchased Ac.1.25 cents only by way of sale agreement from Madineni Papanna. Now, the defendants 1 and 2 are coming forward with a new case by way of the proposed amendment and the said version is quite contrary to their earlier version. If these petitions are allowed, the plaintiff suffers serious loss. The proposed amendment, if permitted, changes the entire defence. No reasons, much less valid reasons, are assigned to explain the delay in seeking the amendment of the written statement and the petitions filed at the stage of arguments are not maintainable. The petitions are filed to make a wrongful gain and delay the disposal of the suit.

6. The learned counsel for the plaintiff while stating that these three applications are filed at the stage of arguments and further reiterating the pleaded case of the plaintiff, which is extracted supra, would contend that the Court below had merely extracted the pleadings of both the sides and then by

cryptic observations allowed the application for amendment and the other two applications, on payment of costs, accepting the plea of the defendants 1 and 2 that by mistake and inadvertence, they could not plead about the existence of a registered partition deed and that the plaintiff can raise any objections in regard to the probative value of the document as and when the document is tendered in evidence and at the time of cross-examination and that the said course adopted by the Court below in passing the orders impugned in the revisions is unjust. The trial Court also failed to consider the aspect that the defendants 1 and 2 are debarred from seeking the amendment in view of the proviso to Order VI Rule 17 of the Code. Once the trial had commenced any amendment of the written statement cannot be permitted unless the party seeking the amendment establishes that he could not seek the amendment earlier despite due diligence. No explanation in that regard is offered by the defendants 1 and 2. The trial Court did not even advert to the contentions of the parties.

7. The learned counsel for the defendants 1 and 2 while reiterating the pleaded case of the said defendants and while supporting the orders of the Court below had stated that the defendants 1 and 2 were granted permission by the trial Court to file a registered partition deed of the year 1984 executed amongst the defendants 1 and 2, their brothers and father and that the said document being a registered document, any contentions that it is not genuine and that the plea based on the said document is not correct cannot be countenanced and that the proposed amendment of the written statement which was permitted by the trial Court is based only on the content of the said document and that therefore, the trial Court by accepting the contentions of the defendants 1 and 2, permitted them to file the document and amend the written statement and hence, the order impugned does not brook interference. He would also submit that since the arguments are only a reiteration of the

pleadings of the parties, the trial Court did not separately refer to the arguments as a detailed reference was made to the pleadings of the parties.

8. I have carefully gone through the pleadings and the orders made by the Court below in the three applications.

9. Dealing first with the application for amendment of the written statement, it is to be noted that the proposed amendment, as stated in the petition list, reads as under:

“ Schedule

Add:

Para 8-A: On 30/3/1984 the father of this defendant, this defendant and defendants 2 to 4 have entered into a registered partition deed with regard to Ac.0.90 cents in suit schedule survey number and other survey numbers and as per the said partition deed Ac.0.90 Cents in the suit schedule survey number with specific boundaries has fallen to the share of father of this defendant, this defendant and defendants 2 and 3. Ever since from the said partition, the father of this defendant, this defendant and defendants 2 and 3 have been in exclusive possession and enjoyment and after the death of the father of this defendant, this defendant and defendants 2 to 4 have been in exclusive possession and enjoyment of the same even till today.”

(Reproduced verbatim)

The first contention of the plaintiff is that application for amendment of the written statement is filed at the stage of arguments and that, therefore, the defendants are debarred from seeking amendment in view of the proviso appended to Order VI Rule 17 of the Code. It is not in dispute that that the suit is at the stage of arguments. By way of the proposed amendment, the defendants 1 and 2 now intend to take a specific plea in regard to partition of certain properties amongst defendants 1 and 2, their brothers and father by virtue of registered partition deed dated 30.03.1984. The grounds on which the plaintiff is opposing the request of the defendants 1 and 2 for amendment

of their written statement reflect that the request is made at a highly belated stage when the suit is at the stage of arguments and that the amendment is contrary to the original pleading in the written statement of the defendants 1 and 2 and that if the amendment is permitted at this belated stage, it changes the nature of the defence of the defendants 1 and 2 and would cause prejudice and hardship to the plaintiff.

10. In this backdrop of facts and contentions it is profitable to refer to the legal position.

In *Rajkumar Gurawara (dead) through LRs v. S.K.Sarwagi and Company Private Limited and another*¹, 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*² the Supreme Court observed that proviso to Order VI Rule 17 of the Code is couched in a mandatory form

¹ (2008) 1 SCC 364

² (2009) 2 Supreme Court Cases 409

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 SWAMY³, 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 SINGH⁴, the Supreme Court, taking note of the fact that 'due diligence' has not been defined in the Code,

³ (2009) 10 SCC 84

⁴ (2008) 5 SCC 117

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 Others⁵, 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.”

⁵ 2013(1)ALD 1(SC)

In the above decision the Hon'ble Supreme Court further referred to the ratio in the decision in Pankaja and another v. Yellapa⁶, 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 (6 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 another⁷ 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

⁶ AIR 2004 SC 4102

⁷ (2002) 7 SCC 559

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. In Rukhmabai v. Lala Laxminaraya and Ors.: AIR 1960 SC 335, 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 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 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 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: (2001) 8 SCC 561.

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.

In *Usha Devi v. Rijwan Ahamd*⁸ a contention was advanced that the trial of the suit would commence with the settlement of the issues; and, in support of the said contention that the framing of issues marked the commencement of the trial of the suit reliance was placed on the decision in *Ajendraprasadji N.Pandey v. Swami Keshavprakeshdasji* [(2006) 12 SCC1]. However, while meeting the said contention, the attention of the Supreme Court was invited to the decision of the Supreme Court in *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498] wherein it was held as follows:

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

⁸ (2008) 3 Supreme Court Cases 717

Further, the Supreme Court having referred to a three-judge Bench decision in *Sajjan Kumar v. Ram Kishan*⁹, had held as follows:

“Having heard the learned Counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial Court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial Court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the Plaintiff-Appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.”

Thus in *Usha Devi's* case (*Supra*), the Supreme Court, keeping in view of the decision in *Sajjan Kumar* (*supra*), held as follows:

“We may clarify here that in this order we do not venture to make any pronouncement on the larger issue as to the stage that would mark the commencement of trial of a suit but we simply find that the appeal in hand is closer on facts to the decision in *Sajjan Kumar* and following that decision the prayer for amendment in the present appeal should also be allowed.”

In the case on hand also, even though the suit is at the stage of arguments, the trial Court permitted the defendants 1 and 2 to file a document, which is a registered partition deed of the year 1984, and the said document is yet to be tendered in evidence before the trial Court. Therefore, in the well considered view of this Court, the facts of the present case are akin to the facts of the cases in the decisions in *Usha Devi*, *Baldev Singh* and *Sajjan Kumar* (*supra*).

In *Andhra Bank v. ABN Amro Bank N V and others*¹⁰ it was held that it is well settled that delay is no ground for refusal of prayer for amendment and

⁹ (2005) 13 SCC 89

¹⁰ (2007) 6 SCC 167

that it is permissible in law to permit to amend the written statement and allow an additional ground of defence to be taken.

In *Basavan Jaggu Dhobi v. Sukhanandan Ramdas Chaudhary*¹¹ it is held to the effect that it is open to the defendant to take even contrary stands or contradictory stands and that thereby cause of action is not in any manner affected and that the issue of cause of action being affected will apply only to a case of a plaint being amended for introducing a new cause of action.

In *Usha Balashaheb Swami and others v. Kiran Appaso Swami and others*¹² it is held that it is well settled principle that a prayer for amendment of the plaint and a prayer for amendment of written statement stand on different footings and that the general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of the claim applies to amendments to plaint and it has no counter part in the principles relating to amendment of written statement and that, therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

11. Reverting to the facts of the instant case, it is to be noted that the defendants 1 and 2 claimed right, title and interest in respect of the suit schedule property by taking various pleas as stated in the counter of the plaintiff. The defence of the defendants 1 and 2, which was referred to in the counter of the plaintiff apart, it is necessary to refer to the relevant defence of the defendants, which is already taken in the written statement. The said defence reads as under:

¹¹ 1995 Supp (3) SCC 179

¹² (2007) 5 SCC 602

“ This defendant submits that originally the land bearing S.No.122 to an extent of Ac.10-30 cents along with some lands belongs to the 5 sons one Mustur Nanjappa. The said 5 sons of Nanjappa sold an extent of Ac.5-15 cents in favour of one Madineni Papanna and Madineni Subbanna for a valuable consideration of Rs.120-00 on 29-1-1925 under registered sale deed and they were put into possession and enjoyment of the same. Since the date of purchase the above two persons became the absolute owners of the above land and enjoying the same exclusively. This defendant submits that in the oral division an extent of Ac.2.57 ½ cents was allotted to the share of Madineni Papanna and the remaining extent of Ac.2.57 ½ cents was allotted to the share of Machineni Subbanna. The said Madineni Papanna died without legal heirs. The share of Papanna was devolved upon his only brother by name Subbanna. After the demise of Papanna, the father of the defendant became the owner of the said property. This defendant submit that after the demise of the father of this defendant, the land bearing S.No.122 measuring Ac.2-57 ½ fallen on the defendants 1 and 2. Since then the defendants 1 and 2 is in possession and enjoyment of the same. They are enjoying the same exclusively specific boundaries. An extent of Ac.0.90 cents was enjoying by the defendants 1 and 2 as hay Rick yard and constructed stone wall all around the extent of Ac.0.90 cents. The remaining extent was kept vacant. This defenanty submits that they have perfected their right and title over the suit property by way of adverse possession also.”
(Reproduced verbatim)

A plain perusal of the above defence reflects that the defendants 1 and 2 are not setting up right, title and interest in the suit schedule property for the first time by way of amendment of the written statement. When the written statement contents and the proposed amendment being sought to be introduced in the written statement are examined in juxtaposition, it cannot be said that the defendants are changing their defence or taking a new plea. Further, the proposed amendment is based, as already noted, on a registered partition deed of the year 1984. The suit is instituted in the year 2012. Therefore, the genuineness of the said document cannot be doubted. If the proposed amendment dealing with the said registered partition deed is

permitted and the said document is received on file by granting leave for filing the same, after reopening the matter, the trial Court would be in an advantageous position to examine the probative value of the said document and the effect of the contents of the said registered partition deed on the issues involved in the suit. The said course helps the trial Court to come to a just decision after comprehensively dealing with the issues after taking into consideration the registered partition deed of the year 1984, which is several decades prior in point of time. Therefore, this Court is of the considered view that it would be a sound exercise of discretion to permit the amendment of written statement and that on the ground of mere delay amendment cannot be refused and the document cannot be refused to be filed. Since the dominant purpose of the Rule is to minimize 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 defendants 1 and 2 can be allowed, in the considered view of this Court. As rightly pointed out, the question whether the defendants 1 and 2 would be entitled to succeed on the proposed defence now being introduced by way of the proposed amendment cannot be prejudged while considering the instant applications, which are filed for amendment of the written statement and receiving the registered partition deed. The amendment, even if permitted at this belated stage, helps in setting at rest the dispute between the parties once and for all. Further, if granting of amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed and the Court has also to consider whether the proposed amendment is intended to determine the real dispute between the parties. In the considered view of this Court, since the plea which the defendants 1 and 2 now intend to take is based on a registered partition deed, no right accrued to the plaintiff would get defeated, if the proposed amendment is allowed. Further, the defendants 1 and 2 are denying the claim of the plaintiff from the beginning and are contending that the plaintiff is not entitled to any relief in

the suit. Further, as per the ratios in the decisions, the defendants 1 and 2 by way of an amendment to the written statement can be permitted to add a new ground of defence or substitute or alter a defence or take an inconsistent plea and the same is not objectionable. In view of the facts and the ratios in the decisions, which are squarely applicable to the facts of the case, this Court is of the considered view that the order permitting the amendment of written statement is justified and that therefore, the orders of the Court below permitting the amendment after re-opening the matter and further granting leave to the defendants 1 and 2 to file the document, which is a registered partition deed, do not brook interference.

12. In the result, the Civil Revision Petitions are dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, in these revisions shall stand closed.

19th October, 2016
RAR

M. SEETHARAMA MURTI, J



