

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.223 of 2015

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ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner/plaintiff is directed against the order dated 02.12.2014 of the learned Senior Civil Judge, Kadapa passed in I.A.no.976 of 2014 in O.S.no.97 of 2007 filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 requesting to permit to amend the plaint as stated in the affidavit and petition.

2. I have heard the submissions of the learned counsel for the petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondents/defendants ('the defendants', for brevity). I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The sole plaintiff brought the suit against the defendants for cancellation of a sale deed dated 07.04.2007 executed by the 2nd defendant in favour of the 1st defendant; and, for a perpetual injunction and costs. The subject matter of the suit is Ac.0.80 cents in three distinct survey numbers, viz., 99/5, 99/6 and 99/8 of Ramarajupalli village and Panchayat of Kadapa Mandal and Kadapa District. The defendants 1 and 4 had filed separate written statements resisting the suit. During the pendency of the suit, the plaintiff had filed the aforementioned application seeking amendment of the plaint. The application was resisted by the contesting defendants. On merits, the trial Court had dismissed the application of the plaintiff. Therefore, the plaintiff had filed the present revision petition.

4. To begin with, it is necessary to refer to the cases of the parties.

4.1 The case of the plaintiff, in brief, is this:

The suit schedule property originally belonged to the wife of the 2nd defendant. He had sold the same to one Indra Kumar under a registered sale deed dated 21.09.1982 in his capacity as GPA Holder of his wife. In turn, the said Indra Kumar had sold the same under an oral agreement of sale to one M.Nagi Reddy. The said Nagi Reddy is the father-in-law of the plaintiff. M.Nagi Reddy, the father-in-law of the plaintiff, had executed a registered Will dated 02.12.2004 in favour of the plaintiff. The said M.Nagi Reddy and the plaintiff are in possession and enjoyment of the properties since 1985. Nagi Reddy died on 08.01.2009, i.e., after filing of the suit in the year 2007. During the life time of Nagi Reddy, he was requesting Indra Kumar to execute a registered sale deed in favour of the plaintiff pursuant to the oral agreement of sale and to put the plaintiff in possession of the schedule property. After the filing of the suit, Indra Kumar had executed registered sale deeds in favour of the plaintiff on 03.10.2007, 12.10.2007, 12.10.2007, 16.10.2007 and 22.10.2007 in respect of total extent of total Ac.0.51 cents of property. Plot no.51 was shown in document dated 07.04.2007. Cancellation of that document was sought in the suit. The plaintiff had obtained plot no.52 from its lawful owner V.Varadaraja under registered sale deed dated 20.10.2007 and is continuing in possession of the said plot since 1985. He had obtained title deed and pattadar pass book in respect of the schedule property. Thus, the plaintiff has become the absolute owner of the suit schedule property by virtue of sale deeds obtained from Indra Kumar and Varadaraja. On account of family disputes and ill-health, he could not initiate steps for seeking amendment of the plaint for narrating the above facts in the plaint. Further, the suit was dismissed for default; and, was restored to file recently. In spite of due diligence, the plaintiff could not seek amendment before commencement of the trial and there are no laches on the part of the plaintiff. The fact of obtaining registered document from Indra Kumar is already mentioned in the affidavit filed in lieu of examination-in-chief. The plaintiff is advised to seek amendment of the plaint for proper adjudication of the present *lis*. No prejudice would be caused to the defendants if the

amendment is permitted.

4.2 The case of the contesting defendants as stated in the counter of the 1st respondent/1st defendant, in brief, is this:

The suit is filed for cancellation of sale deed dated 07.04.2007 executed by the 2nd defendant in favour of the 1st defendant. Except that allegation, all further allegations in the affidavit filed in support of the petition are denied. The plaintiff has no *locus standi* to file the suit as he has no right or title whatsoever over the property as on the date of institution of the suit; and, he cannot seek cancellation of the sale deed dated 07.04.2007. The plaintiff claimed right and title to the suit schedule property basing on the registered Will said to have been executed by one M.Nagi Reddy and filed the suit during the life time of the said Nagi Reddy. Even the said Nagi Reddy had no right and title over the property. The law is well settled that no one can convey a better title than what he has. The amendment is intended to introduce certain events that had happened subsequent to the filing of the suit including the subsequent cause of action for getting over the lacuna in the suit. The suit originally instituted does not disclose a cause of action. Further, the amendment that was sought for, after the commencement of trial to get over the inherent defect in the suit cannot be permitted. In view of the proviso to Order VI Rule 17 of the Code, the plaintiff is debarred from seeking amendment. The amendment relates to cause of action that arose subsequent to the filing of the suit. The proposed amendment takes away the rights that had accrued in favour of the defendants; and, the proposed amendment, if allowed, causes prejudice to the defendants. Hence, the amendment petition is liable for dismissal.

4.3 On merits, the trial Court had dismissed the application for amendment filed by the plaintiff *inter alia* holding that the plaintiff filed the suit claiming rights over the suit schedule property basing upon a registered Will said to have been executed by his father-in-law Nagi Reddy and that by the time of institution of the suit, the said Nagi Reddy was very much alive and that therefore, the plaintiff did not obviously acquire any right, title and interest

during the life time of Nagi Reddy, the testator, and that the case of the plaintiff is that Indra Kumar who had orally sold the suit schedule property to his father-in-law had later, at the request of his father-in-law, had executed sale deeds in respect of part of the property, i.e., Ac.0.51 cents out of Ac.0.80 cents of the suit schedule property and that the said aspects cannot be construed as a subsequent development and that the sale deeds said to have been executed in favour of the plaintiff by the vendor of his father-in-law, Indra Kumar, are subsequent to the execution of the sale deeds in favour of the 2nd defendant by Indra Kumar and that if the amendment is permitted, the cause of action would change and that even according to the plaintiff, all the sale deeds were executed in the year 2007 October and that therefore, the [trial] Court is not in a position to understand as to what prevented the plaintiff from filing the present suit after obtaining the sale deeds instead of filing the suit on the basis of the Will executed by his father-in-law, that too, during the life time of his father-in-law. Having recorded the aforesaid findings, the trial court had further held that the petitioner was not diligent and that in the facts and circumstances of the case, the amendment of the plaint cannot be permitted.

5. At the hearing, the learned counsel for the plaintiff while reiterating the case of the plaintiff, which is already stated supra, would submit that the suit is instituted in April, 2007 and that the sale deeds from Indra Kumar and Varadaraja were obtained in October 2007; that the plaintiff is not changing his stand and the relief claimed in the suit; that he and his father-in-law were continuously in possession pursuant to an oral sale in favour of the father-in-law of the plaintiff; that the plaintiff had purchased part of the suit schedule property, i.e., Ac.0.51 cents out of Ac.0.80 cents under five sale deeds in October 2007 from Indra Kumar; that the plaintiff had also purchased plot no.52 from its lawful owner V.Varadaraja under registered sale deed dated 20.10.2007; that all the purchases made in October, 2007 are subsequent to the suit; that therefore, the observations of the trial Court that the developments cannot be held to be subsequent events is erroneous; that the plaintiff had clearly given valid and sufficient reasons for seeking amendment

after the commencement of the trial; that the plaintiff had also stated that in spite of due diligence, he could not seek amendment earlier due to his family disputes and ill-health; that the trial Court had erred in appreciating the pleadings and also the fact that the documents were obtained subsequent to the suit; that the Court below even at the time of consideration of the entitlement of the plaintiff to seek amendment of the plaint had erroneously observed that since the sale deed in favour of the 2nd defendant is prior in point of time, the sale deeds obtained by the plaintiff are of no avail to the plaintiff; that the said observations, which will have a bearing on the merits of the suit, but, made in an interlocutory application filed seeking amendment of the plaint are not warranted; that the trial Court, while considering the merits of the application seeking amendment ought not to have gone into the probative value of the documents referred to in the proposed pleading stated in the proposed amendment; that the events, which are being sought to be introduced in the plaint by way of the proposed amendment, had taken place subsequent to the suit; that therefore, the plaintiff is entitled to file separate suit on the subsequent cause of action accrued subsequent to the institution of the suit; that the plaintiff can be permitted to amend the plaint instead of driving the plaintiff to file a separate suit, as the intendment of the provisions of the Code is to discourage multiplicity of litigation and to permit the parties to raise contentions available to them for the effective adjudication of the *lis* finally; that the proposed amendment sought for is admittedly not barred by law of limitation; that the proposed amendment is also necessary for complete adjudication of the claims and rival claims of the parties; and, hence, the trial Court instead of dismissing the application ought to have granted permission to amend the plaint.

5.1 On the other hand, the learned counsel for the defendants while supporting the orders of the Court below and while reiterating the defence of the contesting defendants, which is already adverted to *supra*, would contend that the proposed amendment was sought based on certain sale deeds obtained by the plaintiff in October 2007; and that the suit was originally filed during the life time of his father-in-law based on a registered Will executed by

him in favour of the plaintiff; that therefore, as on the date of the suit, the plaintiff is not having right, title and possession over the suit schedule property; that therefore, the plaintiff has no *locus standi* to file the suit; that the Court below ought to have rejected the plaint as the plaint averments do not disclose a cause of action; that the present pleadings of the plaintiff in the proposed amendment, that he had purchased part of the suit schedule property under five sale deeds in October 2007 from Indra Kumar and that he had also purchased in October 2007 plot no.52 under another sale deed by Varadaraja, constitute a separate and distinct cause of action; that if that cause of action is permitted to be introduced in the plaint, the original defect, viz., lack of cause of action for the plaintiff to institute the suit would stand cured and thereby, great prejudice would be caused to the defendants; that the proposed amendment if allowed, would introduce an altogether new cause of action and provides a fresh cause of action to the plaintiff even though no cause of action originally was existing for the plaintiff for the institution of the suit; that admittedly, the proposed amendment was sought after filing of the affidavit in lieu of examination-in-chief of the plaintiff; that therefore, the proviso to Order VI Rule 17 of the Code debars the plaintiff from seeking the amendment.

5.2 He had placed reliance on a decision of this Court in **Chunchu Laxminarayana (died) per L.Rs v. Smt. P.Andamma**^[1]. A reading of the cited decision would show that the plaintiffs therein wanted to substitute a paragraph relating to cause of action in the plaint. This Court, on facts of the cited case, found that the plaintiffs by seeking such amendment wanted a wholesale replacement of cause of action and that the legal representatives of the deceased plaintiff who are seeking amendment are having restricted rights and that by and large the legal representatives are supposed to carry the matter forward in the same form as was presented to the court by their predecessor and that if the cause of action is permitted to be altered, then rest of the pleadings eventually become irrelevant and out of context. Having so found, this Court therefore, upheld the order of the Court below disallowing amendment. On a plain perusal of the decision, it appears that the cited

decision was rendered having regard to the facts peculiar to the case.

6. Before proceeding further, it is necessary to refer to the legal position obtaining. 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 Hon’ble Supreme Court observed that the 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**^[3], on an analysis of English and Indian case law, the Hon’ble 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 bonafide or malafide;**
- (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**^[4], 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.

7.1 Further, in the decision in **Abdul Rehman and Another v. Mohd. Ruldu and Others**^[5], the Hon'ble 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 Hon'ble 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**^[6] 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.”

7.2 Reverting to the instant case facts, what is to be noted is that the plaintiff filed the suit in April 2007 for cancellation of a sale deed. The suit was undoubtedly based upon a registered Will said to have been executed by his father-in-law in favour of the plaintiff and that the suit was instituted even during the life time of the father-in-law of the plaintiff by *inter alia* claiming that the plaint schedule property of an extent of Ac.0.80 cents is in joint possession of the father-in-law of the plaintiff and the plaintiff. Therefore, *prima facie*, the plaintiff had no cause of action. The plaint does not disclose the cause of action as on the date the suit was instituted by the plaintiff as his claim is based upon a Will executed by his father-in-law and as his father-in-law was very much alive as on the date the suit was instituted and as the law is well settled that the Will is an ambulatory document and comes into operation only on the death of the testator. Be that as it may. The father-in-law of the plaintiff died on 09.01.2009, subsequent to the institution of the suit. According to the averments in the proposed amendment, his father-in-law requested one Indra Kumar, who had agreed to sell the plaint schedule property having received the consideration, to execute a registered sale deed in the name of the plaintiff, as per the oral agreement and that pursuant

thereto, the said Indra Kumar had executed five sale deeds in October 2007 in respect of 51 cents out of 80 cents of plaint schedule property in favour of the plaintiff in October 2007. It is the further case of the plaintiff that in respect of plot no.52, the plaintiff had also obtained a sale deed dated 20.10.2007 from one V.Varadaraja. Thus, the plaintiff, by way of the proposed amendment, seeks to introduce in the plaint the pleading to the effect that he had obtained six sale deeds, i.e., five sale deeds from Indra Kumar in October 2007 and one sale deed from Varadaraja on 20.10.2007, i.e., subsequent to the institution of the suit and that by virtue of the said sale deeds, he has now become the absolute owner and that in view of the subsequent events and his obtaining pattadar passbook and title deeds in respect of the suit schedule property; and, he pleads that he may be permitted to amend the plaint by introducing paragraph 5(a) as stated in the affidavit and petition and also the following sentence in the cause of action. *“The cause of action also arose on when the plaintiff get registered suit schedule properties from its lawful owners Indra Kumar and V.Varadaraja”*. (Reproduced verbatim)

7.3 In this backdrop, the main contention of the defendants is that even as per the averments in the plaint, the plaintiff has no cause of action as on the date of the institution of the suit and that if the plaintiff is permitted to introduce subsequent cause of action, which had allegedly accrued on obtaining sale deeds in October 2007 from Indra Kumar and Varadaraja, it would amount to permitting the plaintiff to introduce the cause of action for the first time in the suit for which there was no cause of action at the inception and that the said course, causes prejudice to the defendants and therefore, the amendment cannot be permitted, more particularly, when the amendment was sought after the trial has commenced.

7.4 Even assuming for a moment that the originally instituted plaint, which does not disclose the cause of action is liable to be rejected and that therefore, the plaintiff cannot be permitted to substitute the cause of action on the basis of the subsequent events, what is to be noted is that under Order VII Rule 13 of the Code, rejection of the plaint does not preclude presentation of fresh plaint in respect of the same cause of action. In the case on hand, the

plaintiff wants to substantiate his suit claim by placing reliance on six sale deeds obtained subsequent to the filing of the suit, i.e., in October 2007 from Indra Kumar and Varadaraja. As rightly pointed out, though the sale deeds were obtained in October 2007, the present application seeking amendment of the plaint was filed in the year 2014 when the suit is ripe for trial.

However, the plaintiff in his affidavit has stated that on account of family disputes and ill-health, he could not initiate steps for amendment of plaint despite his due diligence. The said averments are not denied in the counter filed by the 1st defendant. The defendants also stated in their counter that the plaintiff is seeking amendment of the plaint to introduce events that had happened subsequent to the filing of the suit. Though the affidavit in lieu of examination-in-chief of the plaintiff is filed, it is not in dispute that the recording of evidence has not yet been commenced. Even as per the precedential guidance in the decisions of the Supreme Court referred to supra, an amendment can be permitted if it is required for determining the real question in controversy between the parties and that all amendments, which are necessary for the purpose of determining the real questions in controversy between the parties, should be allowed if such amendments do not change the nature of the suit. It is pertinent to note that the plaintiff is not altering the relief claimed in the suit and also his original stand in the plaint and he is intending to supplement the original pleadings by introducing the proposed pleadings by way of amendment based on events that had occurred subsequent to suit. An amendment can be permitted keeping in view larger interests of the parties. Further, if the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed. In the present case, if the amendment as proposed is permitted no right accrued to the defendants would get defeated, as the refusal of the request seeking amendment does not preclude the plaintiff from bringing a fresh suit. Therefore, the refusal of amendment, in the well considered view of this Court, leads only to multiplicity of litigation. As rightly pointed out, the probative value of the documents that are being relied upon by the plaintiff and the merits of the pleadings stated in the proposed

amendment cannot be adjudged while considering an interlocutory application filed for seeking amendment of the plaint. The Court has only to consider whether such amendment is necessary to decide the real dispute between the parties. In the well considered view of this Court, if the amendment is permitted, the amendment, which is based on events subsequent to the institution of the suit though sought belatedly, would prevent multiplicity of litigation and also helps in determining the real question in controversy between the parties and in giving a quietus to the dispute once and for all. Therefore, for all the aforesaid reasons, granting of amendment of the plaint really sub-serves the ultimate cause of justice and avoids further litigation; therefore, the petition filed for seeking amendment of the plaint deserves to be allowed. Viewed thus, this Court finds that the order impugned warrants interference.

8. In the result, the Civil Revision Petition is allowed and the impugned order dated 02.12.2014 in I.A.no.976 of 2014 in O.S.no.97 of 2007 is set aside and the said application is accordingly allowed. Considering the fact that the suit is of the year 2007, the plaintiff is directed to carry out necessary amendments and file in the trial Court a neat copy of the amended plaint within fourteen (14) days from the date of receipt of a copy of this order. On such compliance, the trial Court shall given an opportunity to the contesting defendants to file additional pleadings and frame additional issues, if any, required to be framed and dispose of the suit as expeditiously as possible, however, in strict accordance with the procedure established by law. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

30th March, 2016
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- [\[1\]](#) 2006 (6) ALT 430
- [\[2\]](#) (2009) 2 Supreme Court Cases 409
- [\[3\]](#) (2009) 10 SCC 84
- [\[4\]](#) (2008) 5 SCC 117
- [\[5\]](#) 2013(1)ALD 1(SC)
- [\[6\]](#) AIR 2004 SC 4102