

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4625 of 2016

ORDER:

The revision petitioners are the defendants to the suit in O.S.No.56 of 2014, filed by the revision respondents as plaintiffs on 02.04.2014, for the reliefs of declaration of the registered sale deed No.1601 of 2013, dated 07.05.2013 as null and void by cancelling the same and for costs and such other reliefs, pending on the file of XII Additional Chief Judge, City Civil Court, Secunderabad. The 1st plaintiff died pending suit and his wife as legal representative was brought on record as 2nd plaintiff.

2. Pending the suit, I.A.No.3282 of 2015 was filed by the plaintiffs on 27.08.2015, seeking amendment of the plaint by insertion of certain paragraphs, that is since allowed on 13.02.2016 and impugning the same present revision is filed.

3. The affidavit petition averments in support of the application filed to amend the plaint in brief are that, she came to know of certain relevant facts have not been pleaded by oversight in the plaint when filed by her late husband and the same is required to be incorporated in the original plaint as paras 2A,3A & 4A as follows:

“2A. It is submitted that it was agreed between the plaintiff and the defendants that the title and possession of the suit schedule property would only be transferred subject to the defendants paying the entire sale consideration. The plaintiff agreed to sell the suit schedule property to the defendants only to meet his family necessities. The plaintiff was also suffering from cancer and needed funds for undergoing treatment. It was agreed that the title and possession would be transferred only upon the payment of the total sale consideration, notwithstanding what was

stated in the sale deed dated 07.05.2013. The defendants fraudulently got the impugned sale deed registered by the plaintiff without paying the agreed sale consideration by offering to pay the same by cheques knowing fully well that the same would not be honoured. As the plaintiff did not receive the entire sale consideration, the plaintiff did not hand over to the defendants either the original link document relating to his title, i.e., the sale deed dated 25.06.1993 registered as document No.1519 of 1993 executed by Mr. B.Mahender in favour of plaintiff to the defendants or the original of sale deed executed by the plaintiff in favour of the defendants dated 07.05.2013 registered as document No.1601 of 2013. It was always agreed between the parties that the originals of the said documents along with possession and title of the suit schedule property would only be transferred to the defendants upon the receipt of the complete sale consideration.

3A. It is submitted that as the defendants have been assuring the plaintiff that they would pay the said cheque amounts which relate to the balance sale consideration, the plaintiff did not initiate criminal proceedings against the defendants under Section 138 of the Negotiable Instruments Act, 1881.

4A. It is submitted that as the defendants failed to pay the entire sale consideration to the plaintiff, the title with respect to the suit schedule property was never transferred to them. The plaintiff continues to be the owner and the possessor of the suit schedule property. The sale deed dated 07.05.2013 registered as document No.1601 of 2013 executed in favour of the defendants created a cloud on the title of the plaintiff with respect to the suit schedule property. If the said sale deed is allowed to remain it would cause serious injury to the plaintiff and therefore it is necessary that the same be cancelled. The defendants paid Rs.13,44,400/- in cash to the plaintiff on the date of the execution of the sale deed. The plaintiff is ready and willing to repay the said amount, without interest, to the defendants.”

4. The counter affidavit of the 1st defendant in opposing the same is with contest that, proposed amendment is devoid of merits, won't lie on facts and law, the suit claim itself is meritless as stated in the written statement, the deceased 1st plaintiff being the executant of the sale deed, deemed to have knowledge of the

facts and the 2nd plaintiff being the legal representative of the deceased 1st plaintiff cannot raise new contentions and the proposed amendment saying no consideration passed on the transaction of sale etc., will change the nature of suit and also contrary to the recitals of said registered sale deed showing transfer and passing of absolute title.

5. The lower court observed that the proposed amendment of plaint no way deviates from plaint pleading and suit reliefs and no way changes the nature of suit and no way cause prejudice to the defence of defendants and thereby to be allowed in its allowing.

6. The revision grounds vis-à-vis oral submissions of the learned counsel for the revision petitioners/defendants in impugning the same are that the lower Court gravely erred in allowing the application for amendment instead of dismissal, despite the plaintiff has not shown any sufficient cause for omission of the proposed amendment in plaint, which is nothing but a futile attempt on the part of plaintiffs as the deceased 1st plaintiff being the executant of the sale deed, deemed to have knowledge of the facts and the 2nd plaintiff being the legal representative of the deceased 1st plaintiff cannot raise new contentions and the proposed amendment will change the nature of suit and is also contrary to the recitals of said registered sale deed and sought for allowing the revision.

7. Learned counsel for the plaintiff respondent/2nd plaintiff submits that the order of the lower Court holds good and there is nothing interfere with the same within the limited scope of revision and hence to dismiss the revision.

8. Heard and perused the material on record.

9. Undisputedly the trial of the suit is not commenced and thereby the concept of due diligence as per the amended proviso to order 6 rule 17 CPC no way required to be made out. The proposed amendment is neither belated, apart from same is not a ground to dismiss but for to allow on costs if otherwise necessary, nor does it any way time barred or changes cause of action or nature of suit as laid down by the Apex Court in **K. Raheja Constructions Ltd. & Anr. Vs. Alliance Ministries & Ors.**¹ and **Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) v. Ramesh Chander and Ors.**², leave about the doctrine of relation back would apply to all amendments made under Order VI Rule 17 of the Code of Civil Procedure to date of suit as held in **L.C. Hanumanthappa (since died) rep by LRs Vs. H.B. Shivakumar**³ and quoted with approval in **Siddalingamma and Anr v. Mamtha Shenoy**⁴ and in **Prithi Pal Singh and Anr. v. Amrik Singh**⁵.

10. Coming to the other aspects of whether it caused prejudice to rights of defendants and whether same is not necessary for effective and complete adjudication of the lis concerned, law is fairly settled that Court has to satisfy from the material to consider such amendment is necessary for resolving the real controversy to the lis, reducing life to the litigation, avoid multiplicity of proceedings and sub serving ends of justice, as procedural law is the hand maid and not mistress of justice and

¹ 1995 Supp. (3) SCC 17

² (2010) 14 SCC 596

³ 2016(1) SCC 332

⁴ (2001) 8 SCC 561

⁵ (2013) 9 SCC 576

amendment of pleadings is part of the procedural law. The requirement of due diligence introduced for cases where trial is commenced is for the purpose of preventing frivolous application to delay the proceedings as reiterated in **Salem Advocate Bar Association, T.N V. Union of India**⁶ known as Salem Bar Association case-2, however said phrase due diligence requires liberal construction. This Court in **Waheeda Begum V. Md.Yakub**⁷ by referring to several expressions including **Rajkumar Gurawara** of the Apex Court particularly at para No.24 held that as per the expression, it confers jurisdiction on the Court to allow either party to alter or to amend the pleadings at any stage of the suit and on such terms as may be just, provided such amendment seeks determination of the real question and controversy between the parties; that pre-trial amendments are to be allowed more liberally, than those amendments sought to be made after commencement of the trial. In **Rajesh Kumar Agarwal V. K.K.Modi**⁸ it was held that Courts should allow amendments which are necessary for the purpose of determining the real questions in controversy between the parties provided it does not cause injustice to other side. It was also held that Court can also take note of events subsequent to the filing of the suit, where necessary, to shorten the litigation. The other expression of this Court in **G.S. Prakash Vs. Polasa Hanumanlu**⁹, holds that when the proposed amendment is explanatory in nature and not taking away any admission purportedly made nor taking away right of defence, the rejection on the ground of the amendment loses valuable defence is

⁶ 2005(5) SCJ 519

⁷ 2014(3) ALD 361=(2)ALT-640

⁸ (2006)4 SCC 385

⁹ 2015 (2) ALT 594

unsustainable for the plaintiff must prove his pleading including additional pleading and defendant can set up any further defence by additional written statement and the approach must be liberal to such amendments as held by **Bramwell L.J. in Tidderley Vs. Harper (1878 10 CHD 393) and Pollock J in Steward Vs. NMT Company (1886 16 QB 178)**, relied by the Privy Council in **Mashwe Mya Vs. Maung Mo Hnaung¹⁰** by the Apex Court in **Pirgonda** supra of twin considerations are not working injustice to other side and being necessary for determining real questions in controversy. In **Andhra Bank V. ABN Amro Bank N.V¹¹, Surender Kumar Sharma V. Makhan Singh¹², Pankaja V. Yellappa¹³ and State of A.P. V. Pioneer Builders¹⁴**, it was held by the Apex Court that, delay by itself is no ground for refusal of prayer for amendment, as the only question to be considered by Court is whether such amendment would be necessary for decision of the real controversy between the parties in suit and at that stage the Court cannot go into question of merit of amendment. It was held by the Apex Court in **Ramachandra Sakharam Mahajan V. Damodar Trimbak Tanksale¹⁵** that when the amendment sought for would enable the Court to pin-pointedly consider the real dispute between the parties and thereby help to render a decision more satisfactorily, it ought to be allowed. The Apex Court in **Vidyabai & Ors. v. Padmalatha¹⁶**, held that it is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if

¹⁰ AIR 1922 PC 249

¹¹ AIR 2007 SC 2511

¹² 2009(10) SCC 626

¹³ AIR 2004 SC 4102

¹⁴ AIR 2007 SC 113

¹⁵ (2007)6 SCC 737

¹⁶ AIR 2009 SC 1433

such a condition is fulfilled, the amendment is to be allowed. The three important factors to be taken into consideration while considering the application for amendment are:

1. Whether the amendment sought for is necessary in determining the real controversy of dispute between the parties?
2. Whether the application for amendment is bona fide?
3. Whether the amendment sought for, if allowed, causes prejudice to the other side which cannot be compensated adequately in terms of money?

11. The Apex Court in the case of ***M/s. Revajeetu Builders & Developers v. Narayanaswamy & Sons & others***¹⁷ held as under: "65. The Courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive.

- (i) At what stage the amendment was sought?
- (ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial or post-trial stage;
- (iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.
- (iv) The imposition of costs should not be symbolic but realistic;
- (v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.
- (vi) In case of appeal to higher courts, the victim of amendment is compelled to bear considerable additional costs. All these aspects must be carefully taken into consideration while awarding the costs."

¹⁷ 2009 (10) SCC 84=AIR 2009 SC (Supp) 2897

12. The Apex Court relying upon ***M/s. Revajeetu Builders supra*** held ***in State of M.P. Vs. Union of India¹⁸, Ashutosh Chaturvedi V. Prano Devi¹⁹*** and ***South Konkan Distilleries & Anr. V. Prabhakar Gajanan Naik²⁰*** that though courts have ample power to allow amendment of plaint, said power should be exercised in the interest of justice and to determine the real questions in controversy between the parties and on such terms as may be just, amendment cannot be claimed as a matter of right and court should not also adopt a hyper technical approach but a liberal approach and by compensating other side by costs. In ***South Konkan Distilleries supra***, it was held further that whether claim is barred by limitation or not is a mixed question of fact and law, amendment cannot be rejected, but for to decide during trial on merits of that aspect. It was also held particularly at para-11 that Courts must be extremely liberal in granting prayer for amendment, if the court is of the view that if such amendment is not allowed, the party prayed for it shall suffer irreparable loss or injury or injustice.

13. In ***J.Yadagiri Reddy and others vs. J.Hemalatha and others²¹***, also this Court observed that even in cases where an application for amendment of plaint is filed after commencement of trial, the amendment should be allowed if the amendment sought does not require any evidence to be led specifically or additionally by either of the parties to decide the rights of the parties as the object of the Court should be not to punish a party for any mistake committed in filling the plaint initially. There also in the suit for

¹⁸ 2011 (12)SCC 268

¹⁹ 2008 (15) SCC 610

²⁰ AIR 2009 SC 1177

²¹ 2016 (3) ALT 211

declaration of sale deeds are null and void and amendment sought for as not binding on plaintiff which is about nine years after filing of suit and long after commencement of trial and the suit was almost at fagend of trial. In **B.Srinivasulu Vs. B.Kusuma Kumari** supra it was relying upon several expressions of the Apex Court, observed by this court that amendment when required to resolve real controversy and to avoid future complications including in execution for any ambiguity in property descriptions, the amendment held can be allowed and same is reiterated in another expression in CRP No.3393 of 2015, dt.25.08.2015 relying upon **Surender Kumar Sharma** supra of the Apex Court, that amendment is required to be allowed to resolve real controversy and to avoid multiplicity of proceedings.

14. Further, as held by the Apex Court in **Delhi Development Authority Vs. S.S. Agarwal**²² Order VI Rule 18 of the Code of Civil Procedure casts a duty on the party to carry out the amendment, if allowed by the Court, within the time limited for the said purpose by the order and if no time is thereby stated, then within 14 days from the date of the order. In case the party fails to carry out amendment within said period, he shall not be permitted to carry out the amendment after expiry of the time limited, unless the time is further extended by the Court.

15. Coming to the contentions that an admission made in the written statement or plaint or evidence cannot be allowed to be withdrawn concerned, withdrawal of admission is different from explaining an admission if made inadvertently or otherwise, for

²² AIR 2011 SC 3265

same is not conclusive for that can be explained away at any time before its making use, for otherwise not a conclusive proof but for relevant to use as a piece of proof and use as estoppel to wriggle out from unequivocal and unexplained admission.

16. In ***Mount Mary Enterprises Vs. Jivratna Medi Treat Pvt. Ltd.***²³ it was held by the Apex Court that application for amendment of plaint generally can be granted at any stage of the proceedings unless by virtue of which nature of suit is changed or prejudice is caused to defendant.

17. Amendment of pleadings from the above is basically for the purpose of bringing about final adjudication in a lis and to avoid multiplicity of proceedings and shorten litigation and where it is necessary to determine the real controversy. It is in the interest of justice that a suit shall be decided on all points of controversy and accordingly, it is needed that the party shall be allowed to alter or amend their pleadings during the pendency of the suit. According to Order VI Rule 17 of the Code of Civil Procedure, 1908, the Court may allow the amendment at any stage of the proceedings and for such purpose it may impose conditions i.e. in the form of cost or any other condition. The Court has been given discretion in this regard and the mandatory guidelines upon the Court as well as upon the party seeking amendment is that they shall make only such amendments which are necessary for determination of real controversy between the parties to the suit. At the same time, the *Proviso* to Order VI Rule 17 puts a mandate upon the Court not to allow such amendment after the trial has

²³ 2015(4) SCC 182

begun (i.e. if issues have been settled), if its finds that the party could have raised the pleadings by due diligence at an earlier point of time. However, the *Proviso* need not be given a very rigid effect in all cases as the same is subject to the discretion of the Court, for procedural law does not come in the way to determine real matters in controversy so to permit for rendering substantial justice between parties and to avoid multiplicity of proceedings and life to litigation and of anticipatory future complications. The main object of the legislation is to enable the Court to allow amendment at any stage and thereby delay itself is not a ground to refuse, but for not to permit where there is by such amendment changes cause of action or tantamounts to withdrawal clear admissions unexplained or amendment plea to introduce is mutually destructive or where claim is time barred and allowing it causes grave prejudice and injustice to rights accrued to other side than by refusal. Even alternative pleas are permissible and in case of plaintiff, to choose one to the other inconsistent, though defendant is entitled to take inconsistent pleas even as alternative defenses. The purpose of the *Proviso* cannot thereby do away with the intent of the legislation. Thus, if an application for amendment of pleadings has been filed after trial has begun, the Court will normally be tilted against the applicant, if it could be raised by due diligence at any earlier stage of proceedings. But in proper cases if the point to be amended is very essential to the suit, the Court may, in the interest of justice and equity, allow the amendment on such conditions as the Court deems fit and proper in the facts and circumstances of the particular case, including as to costs for non showing of due diligence and for delay and laches.

18. Where the Court comes to the conclusion of the proposed amendment is just and necessary for the effective adjudication of the lis completely between the parties, the same can be allowed at best on costs for any delay for delay itself is not even ground. No doubt where there are certain admissions the same cannot be permitted to be withdrawn but for to explain. Here it is not even a case of there is any admission of the fact but for the factum of possession delivered is not disputed in the earlier pleadings even the sale deed so recited in seeking to amendment saying no possession delivered. Even taken the same once it is not an admission to be withdrawn but for the omissions stated to be inadvertent that too when trial not commenced even to consider any requirement of due diligence in this regard and it is not even by virtue of such a plea changes very nature of suit or cause of action much less to the prejudice of the defendants but for at best in saying an important fact earlier not raised in the pleadings now cannot be permitted that cannot be a ground to refuse. The factum what is written in the sale deed of delivery of possession it is during trial to consider such an oral evidence can or cannot be adduced by virtue of any bar under Sections 91 and 92 of the Evidence Act if shown applies and thus it is premature to go into the merits of the matter at this stage for permitting amendment as per the settled law.

19. Accordingly and in the result, for there is nothing to sit against the impugned order of the lower court, the revision is dismissed. However it is made clear that the observations in the impugned order no way effect rights of parties to decide on full dressed trial on own merits.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 16.11.2016
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