

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No. 6444 of 2012

ORDER:

The unsuccessful petitioner/ plaintiff filed this revision under Article 227 of the Constitution of India assailing the order, dated 20.07.2012, of the learned II Additional Junior Civil Judge, Warangal, passed in I.A.No.268 of 2012 in O.S.No.425 of 2011 filed by the petitioner/ plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908, requesting to permit to amend the plaint schedule by deleting the schedule already shown in the plaint schedule and substitute the same with the proposed schedule as stated in the petition list.

2. I have heard the submissions of *Sri K.Krishna Reddy*, learned counsel for the revision petitioner/ plaintiff, (hereinafter, 'plaintiff'), and *Sri S Venkatesh Deshpande*, learned counsel for the respondents/ defendants, ('hereinafter, 'defendants'). I have perused the material record.

3. The case of the plaintiff in support of the request for amendment of the schedule of the plaint, in brief, is this:

The plaintiff filed the suit against the defendants for a perpetual injunction in respect of the land in an extent of Ac.0.31 guntas in Sy.No.112/ 118 and another land in an extent of Ac.0.08 guntas in Survey No.112/ 133, i.e., total extent of Ac.0.39 guntas of land of Annaram Shariff Revenue village, Parvathagiri Mandal, Warangal District. In the plaint schedule, the entire extent of Ac.0.39 guntas was shown as one plot within the boundaries mentioned in the original plaint schedule. In fact, the land shown in the plaint schedule covered by the two distinct survey numbers is not a single compact block. The two extents of lands in the two survey numbers mentioned in the plaint schedule are two distinct blocks having separate boundaries. The boundaries were shown in the plaint schedule only in respect of land in Sy.No.112/ 118 but not in respect of the land in Sy.No.112/ 133 as per

the survey conducted by the Inspector. The mistake has crept in the plaint schedule accidentally and due to oversight. The said mistake is not intentional and hence, the same has to be rectified. If permission to rectify the mistake and amend the schedule of the plaint is not granted, in the circumstances stated, the plaintiff suffers irreparable loss.

4. The case of the defendants as stated in their counter, in brief, is this:

The application for temporary injunction filed by the plaintiff was dismissed on a contest raised by the defendants. The suit is posted for trial. At that stage, the plaintiff filed the subject application for amendment of the plaint schedule. In the original plaint schedule, only one item was shown within one set of boundaries on all its four sides. Item no. 2 of the plaint schedule is having different and distinct boundaries. Since the plaintiff is not in possession of 2nd item of the plaint schedule, he is ignorant of the fact that the 2nd item is having distinct and separate boundaries. To get over the said lacuna, the plaintiff intentionally mentioned common boundaries for both the items of property in the original plaint schedule by stating the survey numbers and extents of the two items separately. Insofar as item No.2 of the plaint schedule property within distinct and separate boundaries, there is no cause of action for the plaintiff. The petition is liable to be dismissed.

5. At the hearing before the trial Court, no oral and documentary evidence was adduced. On merits and by the orders impugned in this revision, the trial Court dismissed the petition of the plaintiff. Therefore, the plaintiff is before this Court. At the time of hearing before this Court, learned counsel for both the parties reiterated the respective contentions of the parties, which are stated supra, in detail.

6. The learned counsel for the plaintiff would further submit as under:
'The trial Court erred in dismissing the petition for amendment ignoring the fact that the plaintiff is not changing the survey numbers and extents of the

two items of the property but is giving separate boundaries for item No.2 by way of clarification since in the original schedule, common boundaries for both the items of property were shown by mistake and oversight. The trial Court ought to have seen that the boundaries mentioned in the original plaint schedule are of the 1st item only and that 2nd item is within separate and distinct boundaries and that both the items are not constituting one single plot or block and that by mistake boundaries of 1st item were shown as boundaries of both the items put together. The trial Court ought to have seen that the trial has not yet commenced and that the amendment of the plaint schedule, in the said circumstances stated is necessary for effective adjudication of the */is*. The trial Court ought not to have dismissed the application for amendment when the plaintiff is not changing the survey numbers and extents of properties mentioned in the original schedule but is only furnishing separate boundaries for one of the items already mentioned in the original schedule by way of clarification. The order of the trial Court is unsustainable being not justified.

7. The learned counsel for the defendants while supporting the orders of the Court below would submit that the plaintiff is not in possession of the property covered by the 2nd item of the plaint schedule and therefore, he is ignorant of the boundaries of the said item and hence to get over the said defect, he had intentionally mentioned common boundaries for both the items in the plaint schedule; and, to get over the said defect, the present application is filed; and in fact, insofar as the 2nd item in the plaint schedule, the plaintiff has no cause of action; and hence, the petition was rightly dismissed by the trial Court.

8. I have bestowed my attention to the facts and submissions. I have given detailed and thoughtful consideration to the facts and the submissions. I have perused the plaint as well as the written statement.

9. It is to be noted that the trial in the suit has not yet commenced and that the application for amendment of the plaint schedule was filed even before commencement of trial.

10. Before proceeding further, it is necessary to refer to the provision of law viz., proviso to Order VI Rule 17 of the Code, which 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.”

It is profitable to refer to the legal position also.

In *Usha Devi v. Rijwan Ahamd*¹ 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 VI 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 VI Rule 17 CPC which confers wide power and unfettered discretion on the Court to allow an

¹ (2008) 3 Supreme Court Cases 717

amendment of the written statement at any stage of the proceedings.

Further, the Supreme Court having referred to a three-judge Bench decision in Sajjan Kumar v. Ram Kishan², 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, the trial has not yet commenced and the suit is coming for trial. 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). Therefore, the contention that the application seeking amendment of the plaint schedule is barred under the proviso to Order VI Rule 17 of the Code is devoid of merit and needs no countenance.

² (2005) 13 SCC 89

11. Reverting to the facts of the instant case, it is necessary to examine the original plaint schedule annexed to the plaint which reads as follows:

SCHEDULE OF THE PROPERTIES

An agricultural land in Sy.No.112/118 to the extent of 0.31 guntas, and in Sy.No.112/133 to the extent of 0.08 guntas total 0.39 guntas of Annaram Shareef revenue village of Mandal: Parvathagiri, Dist: Warangal and bounded as follows:

BOUNDARIES

EAST	:	Land of Janagam Ramesh
WEST	:	Land of defendant No.1
NORTH	:	Land of Defendant No.1
SOUTH	:	Land of Lunavath Bhogya"

Thus, in the original plaint schedule, there is reference to (i) Ac.0.31 guntas in Sy.No.112/ 118; and, (ii) Ac.0.39 guntas in Sy.No.112/ 133. The total extent in the plaint schedule is thus Ac.0.39 guntas. In the original plaint schedule, common boundaries were shown for both the said items. According to the plaintiff, the said boundaries relate to the first of the two items in the plaint schedule and that the 2nd item of the plaint schedule is within separate and distinct boundaries, but by mistake, both the items were shown in common boundaries though the said two items do not constitute one single plot or block. Therefore, the plaintiff is now seeking amendment of the plaint schedule to permit the plaintiff to furnish separate boundaries in respect of the 2nd item which is within distinct and separate boundaries. Thus, the plaintiff is not changing the survey numbers and extents of the two items of properties and also the boundaries of the first item of the original plaint schedule, but is only clarifying the schedule by furnishing separate and distinct boundaries in respect of the 2nd item of the plaint schedule by *inter alia* contending that by mistake common boundaries were shown for both the items though they are not constituting a single plot or block and that the mistake has occurred due to oversight. The defendants opposed the application only on the ground that the

plaintiff is not aware of the boundaries of the 2nd item and intentionally wrong boundaries were given for that reason and that to get over the said defect amendment of the schedule is being sought and that there is no cause of action for the plaintiff in respect of the 2nd item of the plaint schedule property. The proposed amendment in the considered view of this Court is only clarifying the existing plaint schedule. In the original plaint schedule, there is a reference to two items of properties, i.e., Ac.0.31 guntas in Sy.No.112/ 118 and Ac.0.08 guntas in Sy.No.112/ 133. The plaintiff is not changing the survey numbers and extents of the said items and also the total extent of the plaint schedule. Now, the plaintiff wants to amend the schedule by *inter alia* stating the boundaries originally mentioned pertain to item No.1 and that the 2nd item is within separate and distinct boundaries and is now furnishing the boundaries for the said item and is thus clarifying the original plaint schedule by furnishing separate and distinct boundaries for item no.2 by retaining the existing boundaries in respect of item No. (1) of the plaint schedule. Since the amendment sought for is clarificatory in nature and it is essential for effective adjudication of the *lis*, this Court is of the considered view that the amendment can be permitted, more particularly, when the amendment was sought before the commencement of trial in the suit.

12. This Court is also of the considered view that it would be a sound exercise of discretion to permit the amendment of the plaint schedule and that on the ground of mere delay amendment cannot be refused. 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 plaintiff can be allowed, in the considered view of this Court. As rightly pointed out, the question whether the plaintiff would be entitled to succeed or not cannot be prejudged while considering the instant application, filed for amendment of the schedule of the plaint. 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 sub-serves 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. No right accrued to the defendants would get defeated, if the proposed amendment is allowed as the defendants are from the beginning denying the plaintiff's entitlement to the reliefs claimed in the suit. On the aforesaid analysis of the contentions and case facts, this Court finds that there is acceptable merit in the contentions of the plaintiff and that there are no impediments for allowing the amendment. For the above said reasons, this Court is of the considered view that the order of the trial Court refusing the amendment of plaint schedule is not justified and that therefore, the order of the Court below brooks interference.

13. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, I.A.No.268 of 2012 in O.S.No.425 of 2011 on the file of the Court of the learned II Additional Junior Civil Judge, Warangal, is allowed. The trial Court shall now permit the petitioner/plaintiff to carry out the amendment to the plaint schedule and file a neat copy of the plaint and thereafter give the defendants an opportunity to file an additional written statement in answer to the amended plaint, if they wish to do so. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

20th December, 2016
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