

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition Nos.405 & 441 of 2013

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- **COMMON ORDER:**

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C.R.P.no.405 of 2013 by the plaintiff is directed against the order dated 02.01.2013 of the learned Additional Senior Civil Judge, Srikakulam in I.A.no.619 of 2012 in O.S.No.102 of 2007 under Order VI Rule 17 read with section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) and Rule 28 of the Civil Rules of Practice requesting to permit the petitioner/ plaintiff to amend the plaint by incorporating sub-paragraph III (C1) after sub-paragraph III (c) in the plaint as stated in the petition list.

C.R.P.no.441 of 2013 filed by the plaintiff is directed against the order dated 02.01.2013 of the learned Additional Senior Civil Judge, Srikakulam passed in I.A.no.593 of 2012 in the same suit-O.S.no.102 of 2007 filed under Order XXVI Rule 9 read with Section 151 of the Code requesting the Court below to make a personal visit to the suit schedule property and make a local inspection of the same or in the alternative, appoint an Advocate Commissioner to note whether there are 'Dhwajasthambham', 'Bell' and 'Hundi' in the 1st defendant-temple.

2. I have heard the submissions of the learned counsel for the revision petitioners/plaintiffs in both the revisions. There is no representation for the respondents 1 and 2, i.e., the temple and the Assistant Commissioner, A.P. Endowments Department, Srikakulam. The respondents 3 to 5 are stated to be not necessary parties. I have perused the material record.

3. Since both these revisions filed under Article 227 of the Constitution of India arise out of the orders passed in two interlocutory applications in the same suit, both the revisions are being disposed of by this common order.

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

The plaintiffs, who are said to be the joint owners of the lands shown in

items 1 and 2 of the plaint schedule, brought the suit against the defendants 1 and 2 for declaration of title and for a consequential perpetual injunction restraining the defendants and their men from ever interfering with the plaintiffs' peaceful possession over the said plaint schedule property. The defendants 1 and 2 are resisting the said suit.

4.1 In the said suit, the plaintiffs had filed the application for amendment of the plaint to permit them to incorporate sub-paragraph-III (C1) after sub-paragraph-III (c) in the plaint as stated in the petition list by *inter alia* contending as follows:

The plaintiffs had taken a specific plea in their plaint that Paatha (old) Anjaneyaswamy Vari temple is a private temple, but, not a public temple as contended by the defendants 1 and 2. The plaintiffs had informed their former counsel that there are two temples in the locality with the names - Sri Anjaneyaswamy temple and Paatha Anjaneyaswamy temple. The Government have not served any notice under Section 6(c) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 ('the Act', for brevity) on the plaintiffs at any time. The above said statement was not made in the plaint by oversight. On change of the Advocate appearing on behalf of the plaintiffs, the said Advocate, during the course of trial, had detected the said mistake that had occurred in the plaint and had advised the plaintiffs to seek amendment of the plaint. Hence, the present petition is filed seeking permission to amend the plaint by incorporating the sub-paragraph III (C1) in the plaint.

4.2 Be it noted that the relevant portion in the said proposed amendment is as follows:

"...The 1st defendant temple is a private temple and no notice was issued to the plaintiffs so far under Section 6 (c) of Act 30 of 1987. The said temple is managed by our maternal uncle by name Bhat Viswanadh. He had also received compensation in respect of the plaint schedule property in O.S.519/1981 when a part of the property was acquired by Government. The 2nd plaintiff used to perform Rajabhogam and other sevas in the 1st defendant temple and he has been doing so till today. The

plaintiffs submit that a notification declaring the temple of Sri Anjaneyaswamy issued under Section 6(c) II of the Act 17/66 was issued on 26-06-1977 and the said notification was not issued in respect of the 1st defendant temple at any time. Subsequently on the motive of Pujari Lakshmayya, who is the then Chairman of endowments got managed the name of the 1st defendant in the Gazette publication without service of mandatory notice. The said acts are contrary to the provisions of the Act and the said notification was issued without notice as contemplated under the Act. The proceedings of the department will be null and void and unenforceable.....”
(Reproduced verbatim)

4.3 The respondents 1 and 2 having filed their counter had resisted the application for amendment *inter alia* contending that the allegations in regard to the notice under Section 6 (C) of the Act as stated in the affidavit and in the proposed amendment are false and that the further allegations that the former counsel had failed to make necessary averments in the plaint by oversight and that the subsequently engaged counsel has detected the said mistake and advised the plaintiff to amend the plaint are all false and that the present application for amendment was filed when the suit is at the stage of arguments and that the said petition is not maintainable and is liable to be dismissed.

4.4 The other application requesting the Court to either make a local inspection or to appoint an Advocate Commissioner is filed by the plaintiffs *inter alia* contending as follows: “As per the Dharma Sastra every temple must have Dwajastambham, Bell and Hundi etcetera when such a temple is declared as a public temple. The 1st defendant temple is not having any such Dwajastambham, Bell and Hundi etcetera. However, DW2 had categorically stated that such amenities are there in the temple. Therefore, if an inspection is made or if a Commissioner is appointed, the true facts will come before the Court. Hence, the present petition is filed.”

4.5 The said application was resisted by the defendants 1 and 2/respondents 1 and 2 herein. They had contended that in view of the fact

that the suit is for declaration of title and consequential injunction, there is no need to appoint a Commissioner or make a local inspection for ascertaining the facts as to the existence of Dwajastambham, Bell and Hundi etcetera and that the petitioners/plaintiffs had earlier filed I.A.no.526 of 2012 before the trial Court seeking the very same relief and that the said petition was dismissed.

5. The Court below, on merits had dismissed both the applications on the same day by orders, which are impugned in these two revisions. Therefore, the aggrieved plaintiffs are before this Court.

6.1 The learned counsel for the petitioners/plaintiffs would submit as follows: "The Paatha (old) Anjaneyaswamy vari temple is situated in the midst of the suit schedule lands. The Court below had erroneously dismissed the application requesting to appoint an Advocate Commissioner or in the alternative to make a local inspection on the erroneous assumptions that the petition is intended to gather evidence and that the Court below had failed to take into consideration the fact that there are two temples, one Patha (old) Anjaneyaswamy Vari temple and another Sri Anjaneyaswamy temple and that the said temples are situated on either side of the National Highway and that the appointment of Commissioner will reduce the volume of oral evidence and would enable the plaintiffs to prove the facts, which cannot be proved by oral evidence and that if a Commissioner is appointed, no prejudice would be caused.

6.2 In regard to other revision, the submissions of the plaintiffs are as follows: "Non-mention of the crucial facts in the plaint had occasioned on account of oversight and the mistake committed by a former counsel engaged by the plaintiffs. The advocate subsequently engaged by the plaintiffs had advised to seek the amendment of the plaint to incorporate the crucial facts, which were omitted to be mentioned in the original plaint by over sight and mistake. The proposed amendment does not change the nature of the suit and would not cause prejudice to the defence of the defendants."

7. I have bestowed my attention to the facts and submissions.

8. The suit is filed for declaration of title in respect of landed property, more fully described in items 1 and 2 of the plaint schedule. One of the submissions of the learned counsel for the plaintiffs is that the Paatha (old) Anjaneyaswamy vari temple is situated in the midst of the lands, i.e., the suit schedule lands. It is fairly conceded that earlier the 1st defendant being represented by its Chairman, Trust Board, by name Pujari Lakshmayya had filed a suit in O.S.no.519 of 1981 against the 2nd plaintiff and the plaintiff's Junior paternal uncle's son by name Balaji Dutt Dave for recovery of possession of the suit schedule property on the ground that the suit schedule lands are taken over by the Endowment Department, Srikakulam on behalf of Patha Anjaneyaswamy vari Diety and that the said suit was decreed and the 1st appeal preferred by the said defendants was dismissed and that while disposing of the Second Appeal 41 of 2001 on 21.04.2006, this Court gave liberty to the plaintiffs i.e., the defendants therein to file a suit for declaration of title over the present suit schedule lands and that therefore, the present suit was brought. In a suit for declaration of title, the legal burden on the plaintiffs never shifts. It is also settled law that in such a suit, the plaintiffs succeed on their own strength but not on the weakness of the defendants. Therefore, the plaintiffs are required to prove their title as per the averments in the plaint in order to succeed in the suit. Neither the local inspection by the court nor an appointment of a Commissioner to note down the existence of Dwajastambham, Bell and Hundi etcetera would be relevant. In a suit for declaration of title, the question in regard to the existence or non-existence of Dwajastambham, Bell and Hundi etcetera is not going to improve or advance the case pleaded by the plaintiffs any further, as the plaintiffs are required to prove their title as required under law by adducing necessary standard of evidence. Hence, there is no need to either make a local inspection by the Court below or appoint an advocate Commissioner to note the existence of the Dwajastambham, Bell and Hundi etcetera in the temple/s. Further, the plaintiffs are now seeking permission of the court to introduce into the pleading of the plaint by way of an amendment certain statements to enable them to contend that no notice under Section 6(c) of the Act was issued in

respect of the 1st defendant temple and that in the absence of a mandatory statutory notice, the proceedings of the defendants issued under the provisions of the Act are null and void. Therefore, the plaintiffs by way of the proposed amendment are now intending to question the notice under Section 6 (c) of the Act in their suit for declaration of title. In the well considered view of this Court the said question is not at all the subject matter of the instant suit. Further, the proposed amendment in the well considered view of this Court, if allowed, introduces an altogether new plea in regard to the validity of the notice under Section 6 (c) though the suit is filed for declaration of title and not to challenge the said notice. Be that as it may. Further, by the time the application for amendment of the plaint was filed by the plaintiffs, the suit is at the stage of arguments.

9. Order VI Rule 17 of the Code reads as under:

17. Amendment of pleadings:- The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties;

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".

The proviso aforementioned places an embargo in exercising the power for granting an amendment unless the jurisdictional fact is established. Any application for amendment after the trial has commenced shall not be permitted unless the plaintiff satisfies the Court that the proposed amendment could not be sought despite exercise of due diligence. In the decision in

Chander Kanta Bansal v. Rajinder Singh Anand^[1] relied upon by the learned counsel for the plaintiffs, the Supreme Court while explaining the meaning of the words "due diligence" has held 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. In other words, due diligence means such diligence as a prudent man would exercise in the conduct of his own affairs. The provision is not a complete bar nor shuts out entertaining of any later applications. The reason for adding proviso is to curtail delay and expedite hearing of cases and that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. There is no dispute with the settled legal position in the cited decision.

10. Reverting to the facts of the case on hand, what is to be reiterated is that the plaintiffs had brought the present suit for declaration of title in respect of the plaint schedule lands. If the plaintiffs prove their ownership or title by adducing necessary standard of evidence and discharge the legal burden, which is upon them and which never shifts, they would succeed in the suit irrespective of the validity of the notice issued under Section 6 (c) of the Act and the presence or absence of Dwajastambham, Well, Hundi etcetera in the temple/s. Therefore, the proposed amendment sought for by the plaintiffs is not necessary for the effective adjudication of the issues involved in the suit. Further, the appointment of an Advocate Commissioner or a local inspection by the court below as sought for by the plaintiffs are also not necessary for effectively adjudicating the issue of declaration of title of the plaintiffs in respect of the suit lands. For the aforementioned reasons, this Court finds that both the petitions are misconceived and that the court below is justified in the facts and circumstances of the case in dismissing both the applications of the plaintiffs.

11. Viewed thus, this Court finds that both the orders, which are impugned in these two revisions, are sustainable both under facts and in law and do not call for any interference.

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

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M. SEETHARAMA MURTI, J

15th March, 2016

Note:- Issue CC by 13-04-2016
(B/o)
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[\[1\]](#) (2008) 5 Supreme Court Cases 117