

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition no.4008 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful 3rd defendant is directed against the order dated 24.08.2015 of the learned Principal Junior Civil Judge, Mancherial of Adilabad District passed in I.A.no.140 of 2015 in O.S.no.242 of 2013 filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to permit to amend the plaint as stated in the petition.

2. I have heard the submissions of the learned counsel for the petitioner/3rd defendant ('the 3rd defendant', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', 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 perpetual injunction in respect of a plot admeasuring 307 square yards in Sy.no.23 situated at Theegalpahad village of R/M Mancherial. The defendants are resisting the suit. While the suit is pending, the plaintiff had filed the subject application before the trial Court for amendment of the plaint. That application was also resisted by the defendants. On merits, the trial Court, by the orders impugned, had allowed the petition and permitted the plaintiff to amend the plaint. Therefore, the aggrieved the 3rd defendant had filed this revision petition.

4. The case of the plaintiff, in support of the request for amendment of the plaint may be stated, in brief, as follows:

The suit is filed for perpetual injunction. The defendants received the notice in I.A.no.624 of 2013 on 04.10.2013 through Court. On receipt of the notices in the said interlocutory application and having entered appearance in the suit on 08.11.2013, the 3rd defendant had illegally started constructing

a temporary shed on the Western side of the plaint schedule property in association with the other defendants. The plaintiff having taken photographs had filed the same along with a compact disc into the Court showing the illegal attempts of the 3rd defendant. The trial Court having heard the submissions of the learned counsel for both the sides passed orders of *status quo* and had directed the 3rd defendant not to make any constructions in the suit schedule property. Thereafter, the 3rd defendant had stopped making constructions in the said portion of the plaint schedule property. The plaintiff is a lawful purchaser and possessor of the suit schedule property. Therefore, he is entitled to seek the reliefs of declaration of title and recovery of possession of the property from the 3rd defendant, after dismantling the illegally constructed temporary shed. The plaintiff had filed documents to show his possession over the property since 1986. Since the plaintiff is the lawful owner of the plaint schedule property, he is entitled for seeking the relief of declaration and recovery of possession of (16) square yards after getting dismantled the temporary construction, which was illegally made by the 3rd defendant. The 3rd defendant is illegally claiming the said property without having any right over the same. Hence, the petition is filed to permit the plaintiff to seek necessary amendments to the plaint including the amendment of the relief claimed in the suit by amending the prayer in the plaint as follows:

“Hence it is prayed that the Court may be pleased to pass a decree and judgment in favour of the plaintiff and against the defendants:

By granting permanent injunction restraining the defendants and their men, and servants from interfering with the possession of plaintiff over the suit schedule house plot measuring 291 sq. yards bearing Sy.no.23 at Teegalpahad village, R/M, Mancherial. The suit for declaration of title and recovery of possession to an extent of 16 sq. yards by dismantling the temporary structure i.e., Tin shed illegally raised by the defendant no.3 in the land of plaintiff.

**Award costs of the suit and
Pass such other relief or the reliefs as the Honourable
Court deed fit and proper”**

(Reproduced verbatim)

5. The defence of the 3rd defendant in his counter is as follows:

The averments in the affidavit filed in support of the petition of the plaintiff are false. After obtaining permission from the Gram Panchayat, this defendant had started construction work in his land of an extent of 242 square yards. In view of the orders of the Court, this defendant had stopped the construction. The plaintiff is in no way concerned with the plaint schedule property, which is in the possession of this defendant. The plaintiff is, therefore, not entitled to the relief of declaration of title and recovery of possession after dismantling the structure raised by this defendant in the property, which is in his lawful possession. This defendant had purchased his land for a valuable consideration from the title holder and had obtained physical possession over 242 square yards in Sy.no.23/2 situated at Teegalapahad shivar. Since the date of purchase, this defendant is in possession without any disturbance from any person at any point of time. The claim of the plaintiff that he is the lawful owner of the plaint schedule property is not correct. After the suit is reserved for judgment, the plaintiff had opted to file the present petition to drag on the matter and is thereby, trying to squeeze money from this defendant. If the Court permits the plaintiff to amend the plaint, this defendant would be put to serious loss as the construction was stopped in obedience to the orders of this Court. Even though this defendant had purchased the land, he is residing in a rented house being unable to peacefully complete the construction over the property in his lawful possession. Before filing the suit, the plaintiff by making a claim over the property, which belonged to the 3rd defendant, had demanded money by showing land documents of an unconcerned property in an unidentified location. The petitioner is intending to file number of petitions to prolong the litigation. Hence, the petition may be dismissed.

6. The learned counsel for the plaintiff would submit as follows:

‘The law is well settled that a suit for injunction can be permitted to be converted into a suit for declaration of title, if the facts of the case so warrant

and that there are no legal impediments for granting such a relief. In any suit for perpetual injunction, if the Court comes to the conclusion that the maintainability of such suit for bare injunction without seeking declaration of title and further reliefs is doubtful, the Court can *suo motu* direct the plaintiff to either amend the plaint and seek declaration of title or may dispose of the suit with suitable directions. Moreover, in the present case on hand, the case of the plaintiff is that he is in possession of the suit schedule property of an extent of 307 square yards as on the date of filing of the suit for perpetual injunction and that the 3rd defendant, having entered appearance in the suit, in association with the other defendants had trespassed into Western side portion of an extent of 16 square yards out of the said total extent and that he had started making illegal construction of a Tin shed and that the plaintiff, therefore, was constrained to take photographs to show the illegal activities of the defendants and also seek amendment of the plaint to enable the plaintiff to seek the relief of perpetual injunction in respect of 291 square yards and declaration of title and recovery of possession in respect of 16 square yards, which was occupied by the defendant after filing of the suit. In view of the subsequent events, the plaintiff is entitled to seek amendment and consequential amendment of the plaint as claimed in the petition filed for the said reliefs. The trial Court had rightly allowed the petition. Hence, the order impugned in the revision by the 3rd defendant does not warrant interference.”

7. On the other hand, the learned counsel for the 3rd defendant/revision petitioner would submit as follows: ‘The amendment was sought after the suit was reserved for judgment. The application for amendment was filed at a highly belated stage. The plaintiff is not the owner of the property. The 3rd defendant is the lawful owner in possession of the property. Because of the *status quo* orders, the 3rd defendant is unable to proceed with the construction peacefully. The application is filed only to drag on the proceedings. The inordinate delay in filing the application for amendment is not explained. In view of the proviso to Order VI Rule 17 of the Code, the plaintiff is debarred from seeking the amendment. The amendment changes

the nature of the suit from one for perpetual injunction to one partly for perpetual injunction and partly for declaration of title and recovery of possession. The proposed amendment, if permitted, takes away the rights that had accrued in favour of the defendants and causes prejudice to the defendants. Hence, the petition seeking amendment is liable to be dismissed. The trial Court without properly appreciating the facts and the legal position obtaining had erroneously allowed the petition of the plaintiff even though the petition is filed at a stage when the suit is reserved for judgment. The plaintiff had failed to plead and establish that such an amendment could not be sought earlier despite exercise of due diligence. Hence, the impugned order is liable to be set aside.'

8. The learned counsel for the 3rd defendant had placed reliance on the following decisions:

- (i) **Chunchu Laxminarayana (died) per L.Rs v. Smt. P.Andamma**^[1].
- (ii) **J.Samuel and others v. Gattu Mahesh and others**^[2]
- (iii) **Rajkumar Gurawara (dead) through L.Rs v. S.Sarwagi and Company Private Limited and Another**^[3]

9. I have given earnest consideration to the facts and the submissions.

10. It is profitable to first refer to the legal position obtaining.

In **J. Samuel** (2nd supra), the Supreme Court while dealing with an application for amendment had held as follows:

“In the given facts, there is a clear lack of “due diligence” and the mistake committed certainly does not come within the preview of a typographical error. The term “typographical error” is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under

the Code.”

In **Rajkumar Gurawara (dead) through LRs v. S.K.Sarwagi and Company Private Limited and another** (3rd supra) 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, 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.”

In the decision in **VIDYABAI V/s. PADMALATHA**^[4] the Supreme Court observed that 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**^[5], 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 SINGH**^[6], 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. Further, in the decision in **Abdul Rehman and Another v. Mohd. Ruldu and Others**^[7], 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.”

In the above decision the Hon’ble Supreme Court further referred to the ratio in the decision in **Pankaja and another v. Yellappa**^[8], 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 v. Yellappa (D) by LRs and others**^[9] 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 another**^[10] 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 dispossessed 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 the proposed amendment. The trial Court rejected the application for 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. ***Mst. Rukhmabai v. Lala Laxminaraya and Ors.*** [1960]2SCR253, 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 of the 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 amendment. 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: AIR2001SC2896.

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.

11. Reverting to the instant case facts, what is to be noted is that the plaintiff had originally filed the suit for perpetual injunction in respect of 307 square yards of house site. According to the plaintiff, the 3rd defendant after receiving the notices in an interlocutory application through Court had entered appearance and had later in association with the other defendants

had encroached upon 16 square yards on the Western side of the plaint schedule property and had started making a construction of a Tin Shed and that therefore, the plaintiff is constrained to seek amendment of the plaint by incorporating the necessary averments and also to restrict the originally claimed relief of perpetual injunction in respect of 291 square yards and to further claim the further relief of declaration of title and recovery of possession in respect of 16 square yards, which was occupied by the defendants after filing of the suit.

12. As rightly pointed out, the date on which the 3rd defendant trespassed into the property is not pleaded in the proposed amendment. The suit was originally filed in September, 2013. But, in the proposed amendment i.e., in the proposed cause of action paragraph, it is stated that on 08.11.2013, the 3rd defendant had illegally made a temporary structure in the suit land. Therefore, it is clearly pleaded in the proposed amendment that the 3rd defendant trespassed into the property after receipt of notice in the interlocutory application on 08.11.2013. Further, it is true that though the alleged trespass was made in November 2013, the petition for amendment was not filed till the year 2015. Therefore, the learned counsel for the 3rd defendant forcefully contends that the amendment which is highly belated should not be permitted. Even assuming for a moment that the plaintiff ought to have immediately sought the amendment of the plaint and not belatedly, what is to be noted is that the proposed amendment is being sought on the basis of events, which had occasioned subsequent to the institution of the suit. In view of the contention of the plaintiff that after institution of the suit, the 3rd defendant in association with the other defendants had trespassed into a portion of the plaint schedule property, the relief of perpetual injunction in respect of the property which was trespassed into has become infructuous and the plaintiff is now constrained to seek amendment of the plaint to enable the plaintiff to seek the reliefs of declaration of title and recovery of possession in respect of that portion of the property, which was said to have been occupied by the 3rd defendant, after the institution of the suit. Therefore,

according to the plaintiff, the 3rd defendant, by his conduct was responsible; and that only in view of the illegal conduct of the 3rd defendant, the plaintiff has no other option except to seek the reliefs of declaration of title and recovery of possession in respect of the property of 16 square yards, which was trespassed into by the 3rd defendant. Even as per the precedential guidance of the Supreme Court, an amendment can be permitted if it is intended to determine the real question in controversy; and all amendments which are necessary for the purpose of determining real questions of controversy between the parties should be allowed if such amendments sought for do not change the basic nature of the suit. It is also pertinent to note that the plaintiff is not precluded from bringing a fresh suit for recovery of the property, which was occupied, based on the subsequent cause of action.

A change in the nature of relief claimed shall not be considered as a change in the nature of suit. The power of amendment should be exercised in the larger interests of doing full and complete justice between the parties and that all amendments, which are necessary for the purpose of determining the real question in controversy, should be allowed. Further, if the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed. The Court has also to consider whether the proposed amendment is intended to determine the real dispute between the parties. The law is well settled that all amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. If the amendment as proposed is allowed, no right accrued to the defendants would get defeated as the defendants are denying the possession of the plaintiff and are contending that they are in possession of the property. Further, as the refusal of the request seeking amendment does not preclude the plaintiff from instituting a fresh suit, the refusal of the request leads to multiplicity of the litigation. As rightly pointed out, the question, whether or not the 3rd defendant had trespassed into the property after the institution of the suit, cannot be pre-judged while considering an application which is filed for seeking the

amendment of the plaint. 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 also helps in avoiding the multiplicity of the proceedings and in setting at rest the dispute between the parties. 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 well-considered view of this Court. In order to avoid multiplicity of suits, it would be a sound exercise of discretion to permit the amendment being sought for in the pending suit. As per the precedential guidance, the well settled rule of practice is not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment, if the plaintiff seeks to do so. Therefore, for all the aforesaid reasons, granting of amendment of the plaint really sub-serves the ultimate cause of justice and avoids further litigation and therefore, the amendment sought for by the plaintiff deserved to be allowed.

13. Viewed thus, this Court finds that the Court below is justified in permitting the plaintiff to amend the plaint and that the order impugned warrants no interference.

14. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

07th April, 2016
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[\[1\]](#) 2006 (6) ALT 430

[\[2\]](#) (2012) Supreme Court Cases 300

[\[3\]](#) (2008) 1 Supreme Court Cases 364

[\[4\]](#) (2009) 2 Supreme Court Cases 409

[\[5\]](#) (2009) 10 SCC 84

[\[6\]](#) (2008) 5 SCC 117

[\[7\]](#) 2013(1)ALD 1(SC)

[\[8\]](#) AIR 2004 SC 4102

[\[9\]](#) AIR 2004 SC 4102 (1)

[\[10\]](#) (2002) 7 SCC 559