

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4430 of 2016

ORDER:

The unsuccessful petitioners/defendants filed this revision petition, under Article 227 of the Constitution of India, assailing the order dated 17.08.2016 of the learned Junior Civil Judge, Sathyavedu, Chittoor District, passed in I.A.No.229 of 2016 in O.S.No.71 of 2012 filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 requesting to permit them to amend the written statement.

2. I have heard the submissions of *Sri S.V.Muni Reddy*, learned counsel for the revision petitioners/defendants (hereinafter, 'defendants') and *Sri S.Lakshminarayana Reddy*, learned counsel, representing *Sri C.Sharan Reddy*, learned counsel for the respondent/plaintiff (hereinafter, 'plaintiff'). I have perused the material record.

3. The basic facts, as per the submissions made by the learned counsel for the parties and as could be culled out from the material on record, in brief, are as follows:

The plaintiff brought the suit against the defendants for grant of perpetual injunction restraining the defendants, their men, agents and servants from in any way interfering with plaintiff's peaceful possession and enjoyment of the schedule mentioned property. The plaintiff's side evidence was closed. When the suit is coming for adducing evidence on the side of the defendants, the subject application was filed by the defendants seeking amendment of their written statement.

4. In support of the said request, the case of the defendants is as follows:
'The suit property originally belonged to Tambari Bodaiah @Bodaiah Naidu and

Tambari Munaswamy @ Muna Swamy Naidu, who are the ancestors of the defendants. They have been in peaceful possession and enjoyment of the suit schedule property with absolute rights and the names of the defendants were mutated in the revenue records. The plaintiff taking advantage that his father's name is 'Munaswamy' and the surname is 'Thambari' misrepresented the facts to the then Tahsildar of Nagalapuram and got mutated the subject property in his name in the revenue records and obtained Pattadar passbook and title deed book illegally. Aggrieved by the orders of the Tahasildar, the defendants preferred an appeal before the RDO. The said appeal was closed by the then RDO without conducting any enquiry. Aggrieved thereby, the defendants preferred an appeal to the Joint Collector in D.Dis.No.D4/ 3344/ 2013. After due enquiry, the Joint Collector, Chittoor allowed the appeal and directed the Tahasildar, Nagalapuram, to conduct fresh enquiry. At the time of filing of the written statement, the appeal filed by them before the Joint Collector was pending. Subsequently, the orders canceling the Pattadar passbook and title deed book, which were issued illegally to the plaintiff by the then Tahasildar, Nagalapuram and directing fresh enquiry by the Tahasildar, Nagalapuram, were passed by the Joint Collector. If the amendment sought for by the defendants is permitted, the defence will not be altered and that the said course will not cause any prejudice to the case of the plaintiff. Hence, the petition seeking amendment of the written statement may be allowed.'

5. In the counter filed by the plaintiff resisting the application filed by the defendants for amendment of the written statement it is contended as follows: 'The plaintiff obtained orders of temporary injunction against the defendants. The plaintiff has been in physical possession and enjoyment of the suit land. The plaintiff is the original owner and the property was inherited by him from his father. He has been in possession for over thirty years and was and is raising crops. The defendants are strangers to the property. The Joint

Collector has no power to cancel the Pattadar and title deed books. The plaintiff has *prima facie* case and the balance of convenience is in his favour. Therefore, the petition seeking amendment of the written statement is liable to be dismissed.'

6. No oral and documentary evidence was adduced at the hearing of the interlocutory application. The trial Court by the order impugned dismissed the petition seeking amendment of the written statement filed by the defendants observing *inter alia* that there is no need to amend the written statement merely for incorporating the result of an order, which was passed after three years from the date of filing of the suit, and that the defendants will be having an opportunity to produce the documents on their behalf regarding the developments subsequent to the filing of the suit.

7. Aggrieved thereof, the defendants filed this revision petition.

8. The learned counsel for the defendants while reiterating the case of the defendants, which is stated *supra*, would contend as under: "The proposed amendment of written statement is just and necessary for the purpose of elucidating the facts and the event subsequent to the filing of the written statement and for determining the real question in controversy between the parties. By his order dated 28.05.2016, the Joint Collector, Chittoor, cancelled the Pattadar pass book and title deed of the plaintiff and directed the Tahasildar concerned to hold a fresh enquiry. Hence, it has become necessary to seek the proposed amendment of the written statement only to bring the said facts and subsequent event to the notice of the Court. The amendment of the written statement is being sought for only to incorporate the said fact and subsequent event in the written statement. In the light of the said undisputed fact, the plaintiff is not entitled to claim a decree for permanent injunction without seeking declaration of title. The amendment sought for, if permitted, does not change the basic structure of the defence and would not cause any

prejudice to the plaintiff. The Court has wide power to grant amendment of written statement, as permitting the amendment of written statement stands on a different footing than that of permitting the amendment of a plaint. In a case of this nature, the amendment sought for ought to have been allowed by the trial Court as the defendants, who are seeking the amendment of their written statement just to bring to the notice of the Court the subsequent events, are able to show that they could not seek instant amendment earlier inspite of due diligence. Further, the defendants will not be permitted to adduce oral evidence unless the written statement is duly amended to include necessary pleading based on the subsequent event as the law is well settled that no evidence unsupported by pleadings would be permitted to be adduced. The trial Court erred in dismissing the petition observing wrongly that the defendants can adduce evidence.”

9. *Per contra*, the learned counsel for the plaintiff while reiterating the pleaded case of the plaintiff, which is stated supra, would submit as under: “The plaintiff has been in possession of the schedule land for the past thirty years. Even a trespasser cannot be evicted from his peaceful possession without following the due process of law. The Joint Collector has no power to cancel the Pattadar passbook. The Tahasildar, Nagalapuram, has not taken any steps to implement the order of the Joint Collector. Therefore, the amendment, even if permitted, is not going to be of any avail to the defendants. Further, the amendment is being sought only to bring to the notice of the Court an order passed by an officer of the Government subsequent to the suit and hence, as rightly observed by the trial Court evidence can be adduced by the defendants by producing the document. The plaintiff has already challenged the order of the Joint collector before this Court. The amendment that is being sought for after the trial has commenced and made progress cannot be permitted and that the application seeking amendment is barred in view of the

proviso under Order VI Rule 17 of the Code. If the defendants are aggrieved, they can file a suit for declaration of their right and title over the suit land.

10. I have carefully gone through the pleadings and the orders of the Court below. I have bestowed my attention to the facts and submissions.

11. In this backdrop of facts and contentions it is profitable to refer to the legal position.

In *Rajkumar Gurawara (dead) through LRs v. S.K.Sarwagi and Company Private Limited and another*¹, 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 inspite 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 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

¹ (2008) 1 SCC 364

² (2009) 2 Supreme Court Cases 409

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 SWAMY³, 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 SINGH⁴, 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

³ (2009) 10 SCC 84

⁴ (2008) 5 SCC 117

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 Others⁵, 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. Yellapa⁶, which runs as follows:

⁵ 2013(1)ALD 1(SC)

⁶ AIR 2004 SC 4102

“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 (6 supra) 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 another⁷ 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 disposed 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 proposed the 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

⁷ (2002) 7 SCC 559

while allowing the appeal of the plaintiff had referred to its earlier decisions and had finally held as follows:

8. In Rukhmabai v. Lala Laxminaraya and Ors.: AIR 1960 SC 335, 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 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 amended. 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: (2001) 8 SCC 561.

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.

In *Usha Devi v. Rijwan Ahamd*⁸ 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 6 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 6 Rule 17 CPC which confers wide power and unfettered discretion on the Court to allow an 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 Kishan*⁹, had held as follows:

⁸ (2008) 3 Supreme Court Cases 717

⁹ (2005) 13 SCC 89

“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, the evidence on the side of the plaintiff was closed and the suit is coming up for defendants' side evidence. 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 of the plaintiff is devoid of merit. Further when the amendment of the written statement is being sought for based on an event subsequent to the filing of the written statement it follows that inspite of due diligence the defendants could not have raised the matter earlier to the event and that the proviso to Order VI Rule 17 of the Code has no application to the facts of the case.

In *Andhra Bank v. ABN Amro Bank N V and others*¹⁰ it was held that it is well settled that delay is no ground for refusal of prayer for amendment and that it is permissible in law to permit to amend the written statement and allow an additional ground of defence to be taken.

In *Basavan Jaggu Dhobi v. Sukhanandan Ramdas Chaudhary*¹¹ it is held to the effect that it is open to the defendant to take even contrary stands or contradictory stands and that thereby cause of action is not in any manner affected and that the issue of cause of action being affected will apply only to a case of a plaint being amended for introducing a new cause of action.

In *Usha Balashaheb Swami and others v. Kiran Appaso Swami and others*¹² it is held that it is well settled principle that a prayer for amendment of the plaint and a prayer for amendment of written statement stand on different footings and that the general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of the claim applies to amendments to plaint and it has no counter part in the principles relating to amendment of written statement and that, therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

12. Reverting to the facts of the instant case, it is to be noted that the proposed amendments, as stated in the petition list, read as under:

¹⁰ (2007) 6 SCC 167

¹¹ 1995 Supp (3) SCC 179

¹² (2007) 5 SCC 602

“Proposed Amendments:

- I. Insert para 10 A after para 10 of the Written Statement

This Defendants humbly submits that the plaintiff is not entitled for relief of permanent injunction without seeking declaration of Title over the suit property.

- II. Insert para No.15A after para 15 of Written statement

This Defendant humbly submit that after due enquiry the Joint Collector Chittor allowed Appeal filed by the Defendants in D Dis No.D4/3344/2013 dated : 28-05-2016 by canceled Pattadar Pass Book and Title deed which was issued illegally to the Plaintiff by the then Tahasildar Nagalapuram and direct Tahasildar, Nagalapuram conduct fresh enquiry.”

(Reproduced verbatim)

13. A plain reading of the proposed amendments would signify that the amendments sought for are obviously intended to bring to the notice of the Court the subsequent events and that the amendment if permitted will not alter the defence much less detrimental to the interests of the plaintiff. Even though the application for amendment was filed after the evidence on the side of the plaintiff was closed, as rightly contended by the learned counsel for the defendants, they can be permitted to amend the written statement to bring to the notice of the Court the subsequent events. Since the proposed amendment is based on a subsequent event and as the Court is always empowered to take note of the subsequent events, the amendment can be permitted. Since the amendment relates to a factual subsequent event, if the amendment of the written statement is permitted and the plaintiff is given an opportunity to answer the additional plea in the amended written statement by filing a rejoinder pleading, if any, there will be pleadings of both the sides on the said event and the parties would be in a position to adduce evidence based on their respective pleadings. The law is well settled that a Court will not look into any evidence, which does not find support from the pleadings. Therefore, merely

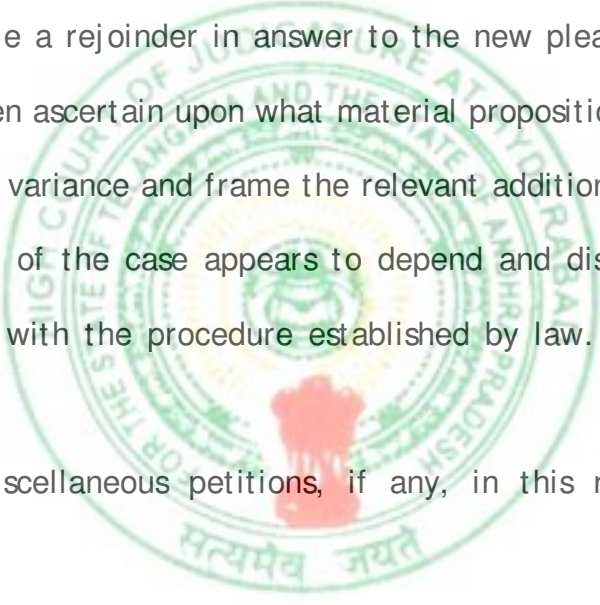
on the ground that the Court can permit evidence to be adduced in regard to the subsequent event, the proposed amendment cannot be refused as the parties would be required to lead evidence on the aspects which find support from the pleadings but not on aspects which are not pleaded. Further, if the proposed amendment is permitted, the trial Court would be in an advantageous position to examine the issues involved in the suit in proper perspective after duly considering the defence which the petitioners really intend to advance in the case. The said course helps the trial Court to come to a just decision after considering the true import of the defence of the defendants. Therefore, this Court is of the considered view that it would be a sound exercise of discretion to permit the amendment of written statement 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 defendants can be allowed, in the considered view of this Court. As rightly pointed out, the question whether the defendants would be entitled to succeed on the proposed defence now being introduced by way of the proposed amendment cannot be prejudged while considering the instant application, filed for amendment of the written statement.

14. The amendment, if permitted even at the 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. By permitting the amendment, no right accrued to the plaintiff would get defeated. Further, as per the ratios in the decisions, the defendants by way of an amendment to the written statement can be permitted to add a new ground of defence or substitute or alter a defence or take an inconsistent plea and the same is not objectionable. In view of the

facts and the ratios in the decisions, which are squarely applicable to the facts of the case, this Court is of the considered view that the order of the Court below refusing the amendment of written statement is not justified and that therefore, the order of the Court below dismissing the petition seeking amendment brooks interference.

15. In the result, the Civil Revision Petition is allowed and the impugned order is accordingly set aside. As a sequel, I.A.No.229 of 2016 in O.S.No.71 of 2012 on the file of the Court of the learned Junior Civil Judge, Sathyavedu, Chittoor District, is allowed. The trial Court shall now permit the defendants to carry out the amendment and file a neat copy of the written statement and the plaintiff to file a rejoinder in answer to the new pleading in the written statement and then ascertain upon what material propositions of fact or of law the parties are at variance and frame the relevant additional issue/s on which the right decision of the case appears to depend and dispose of the suit in strict accordance with the procedure established by law. There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this revision shall stand closed.


M. SEETHARAMA MURTI, J

01st November, 2016
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