

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.551 of 2013

ORDER:

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This civil revision petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/appellant/plaintiff is directed against the orders dated 07.11.2012 of the learned VI Additional District Judge, Guntur (Judge, Fast Track Court) passed in IA.no.1557 of 2012 in AS.no.37 of 2010 filed under Order VI Rule 17 read of the Code of Civil Procedure read with Section 28 of Civil Rules of Practice requesting to permit to amend and consequently amend the plaint as detailed in the petition list.

2. I have heard the submissions of the learned counsel for the revision petitioner/appellant/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondent/defendant ('the defendant', for brevity). I have perused the material record.

3. The core facts necessary to be stated as a prelude to this order, in brief, are as follows:

On the dismissal of her suit for perpetual injunction, the plaintiff having brought the first appeal suit before the Court below had filed the subject application seeking amendment of the plaint to enable her to seek the reliefs viz., declaration of title over the plaint schedule property, recovery of possession of the same and mandatory injunction for removal of the permanent constructions made thereon by the defendant during the pendency of the appeal suit. That application was resisted by the defendant. By the orders that are impugned in this revision, the Court below had dismissed the said petition. Therefore, the Appellant/plaintiff is before this Court.

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

She is the absolute owner of the plaint schedule property. When the defendant made an attempt to interfere with her peaceful possession and enjoyment over the same, she had brought the suit for a perpetual injunction. The defendant had highhandedly occupied the thatched house situate in part of the plaint schedule property in an extent of Ac.0.06 cents of site. At that stage the plaintiff did not amend the plaint as she did not know the legal consequences. Further, the defendant disputed the Will dated 30.11.1989 executed by her paternal grandmother. In the circumstances, during the pendency of the first appeal, she was advised to amend the plaint to seek the reliefs viz., declaration of title over the plaint schedule property, recovery of possession of the same and mandatory injunction for removal of the permanent constructions made thereon. Since the appeal is a continuation of the suit proceedings, the petition for amendment is maintainable. Further, during the pendency of the first appeal suit, the defendant had made pucca constructions in the said extent of Ac.0.06 cents after removing the thatched hut. In view of his illegal acts, the plaintiff is constrained to seek the amendment of the plaint by filing the instant application.

5. The case of the defendant, in brief, is this:

The material allegations in the affidavit filed in support of the petition are false. The allegations that during the pendency of the suit, the defendant had entered into a part of the plaint schedule property, that is, an extent of Ac.0.06 cents and occupied the thatched hut are all false. The averments made in the supporting affidavit filed by the plaintiff are false. The pleadings are silent as to in which year and month the defendant had trespassed into the thatched house. The claim of the plaintiff that she is the absolute owner of the plaint schedule property based on Will dated 30.11.1989 is not true. The said Will is a fabricated document. No court fee is paid on the proposed relief of mandatory injunction. The plaintiff has to pay court fee separately on the reliefs of declaration and mandatory injunction. She has to produce a valuation certificate. At the earliest opportunity, the defendant had raised a defence that the suit for bare injunction without seeking the relief of declaration of title is not maintainable. In a pending interlocutory application

in the suit, it was stated that the defendant had trespassed into the plaintiff's scheduled property. The contentions of the plaintiff in the present petition are contrary to the said averments in the said application. The amendment being sought for in the appeal suit at a belated stage cannot be permitted. The proposed amendment introduces a new cause of action; and the amendment if permitted changes the nature and character of the suit; and the issues now being raised require adduction of fresh evidence by both the parties. The plaintiff has got the option to file a fresh suit for seeking the proposed reliefs. The amendment sought changes the jurisdiction and ousts the jurisdiction of the trial Court. The petition is filed with a *mala fide* intention. The petition may be dismissed.

6. At the hearing before the Court below, no oral and documentary evidence was adduced on either side. On merits and by the order impugned, the Court below had dismissed the petition of the plaintiff. Therefore, the plaintiff is before this Court.

7. The learned counsel for the plaintiff while reiterating her pleaded case would submit that in view of the subsequent events and the conduct of the defendant, the plaintiff is constrained to seek the amendment as stated in the petition and that on the subsequent cause of action, the plaintiff is entitled to file a suit for the self same reliefs, which are being sought for by way of the proposed amendment, and that to avoid multiplicity of proceedings, it is in the interests of justice to permit the plaintiff to amend the plaint and prosecute the suit by claiming all the reliefs comprehensively in the pending suit. The law permits the plaintiff to seek amendment at any stage of the proceeding; and the appeal is a continuation of the suit. The plaintiff is an illiterate lady and the defendant is her brother. Though the defendant had trespassed into the thatched house during the pendency of the suit, she could not seek the amendment because of her illiteracy. In view of the fact that during the pendency of the appeal suit, the defendant had made pucca constructions after removing the thatched hut and had denied the title of the plaintiff, she was advised to seek the amendment to have comprehensive adjudication of all the issues involved in the *lis* and to set at rest the disputes between the

parties once and for all.

8. Per contra, the learned counsel for the defendant while reiterating the case of the defendant, which is already stated supra, and while supporting the orders of the court below would contend as follows: “The plaintiff is very well aware even according to her own showing that the defendant is in possession of the thatched hut even during the pendency of the suit. Having filed a suit for perpetual injunction, she did not take steps at the earliest point of time for amendment of the plaint. The present petition is belatedly filed during the appeal stage when the court below is insisting for hearing of the first appeal suit. In view of the bar contained in the proviso appended to Order VI Rule 17 the petition is not maintainable.

8.1 The learned counsel placed reliance on the decisions in **J. Samuel and others v. Gattu Mahesh and others**^[1] and **Narani Jangaiah and others v. Pasham Anjaneyulu and others**^[2] in support of the contention that unless the plaintiff establishes that inspite of due diligence she could not have raised the matter before the commencement of the trial, the amendment petition cannot be entertained and the amendment cannot be permitted; He had also stated that in the case on hand the plaintiff could not plead and establish the jurisdictional fact.

9. I have bestowed my attention to the facts and given earnest consideration to the submissions. I have gone through the decisions cited.

9.1 In view of the contentions and rival contentions, it is profitable to refer to the proviso to Order VI Rule 17 of the Code and the legal position obtaining.

Proviso to Order VI Rule 17 of the Code:

“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 **J. Samuel and others v. Gattu Mahesh and others** (1st 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 L.Rs v. S.Sarwagi and Company Private Limited and Another**^[3], 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.”

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 had, 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 Supreme Court, therefore, concluded that 'due diligence' would mean reasonable diligence or such diligence as a prudent man would exercise in the conduct of his own affairs.

Further, 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 Supreme Court further referred to the ratio in the decision in **Pankaja and another v. Yellapa**^[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** (8th 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 **State of A.P v. M/s.Pioneer Builders**^[9] it was held as follows:

Principles governing amendment of pleadings are well-settled. Order VI Rule 17 C.P.C. deals with the amendment of pleadings and provides that the Court may at any stage of the proceedings allow either party to alter or amend pleadings in such a 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. It is trite that though an amendment cannot be claimed as a

matter of right under all circumstances, yet the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. It is equally well-settled that unless serious injustice or irreparable loss is likely to be caused to the other side, the Court should adopt liberal approach and not a hyper-technical approach particularly in a case where the other side can be compensated with costs. Dominant object to allow the amendment in the pleadings liberally is to avoid multiplicity of proceedings (See: *L.J. Leach & Co. Ltd. and Anr. v. M/s Jardine Skinner & Co.* [AIR 1957 SC 357]; *Smt. Ganga Bai v. Vijay Kumar and Ors.* [(1974) 2 SCC 303] and *B.K. Narayana Pillai v. Parmeswaran Pillai and Anr.* [(2000)1 SCC 712]) Nevertheless, one distinct cause of action cannot be substituted for another nor the subject-matter of the suit can be changed by means of an amendment. The following passage from the decision of the Privy Council in *Ma Shwe Mya v. Maung Mo Hnaung* A.I.R. 1922 PC 249 succinctly summarises the principle which may be kept in mind while dealing with the prayer for amendment of the pleadings:

“All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit.”

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 had 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 had sought for the relief of declaration of title to the suit property and consequential relief of recovery of possession. The defendant had 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 way of the proposed amendment. The trial Court had 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. *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*: AIR 2001 SC 2896).

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.

10. Reverting to the instant case facts, what is to be noted is that the plaintiff having been unsuccessful in her suit for perpetual injunction had brought the first appeal suit before the Court below. She is now seeking amendment of the plaint to enable her to seek the reliefs of declaration of title and recovery of possession coupled with mandatory injunction for removal of pucca constructions made over the trespassed portion *inter alia* contending that during the pendency of the suit, the defendant had trespassed into a part of the property including a hut, which was in existence by that time, and that during the pendency of the first appeal suit, pucca constructions were made after removing the hut; and that apart, in view of the denial of the title by the defendant, the plaintiff is advised to seek the amendment. The main contention of the defendant is that the amendment is being sought at a belated stage, that too, in the first appeal suit and that the proposed amendment changes the nature and character of the suit and that the plaintiff could not show that despite due diligence she could not seek the amendment at the earliest point of time.

11. Dealing first with the aspect that the application is barred in view of the proviso to Order VI Rule 17 of the Code, it is to be noted that in this case the amendment is not being sought during the pendency of the original suit. Rule 17 of the Code lays down that the Court may, at any stage of the proceedings, allow either party to alter or amend the pleadings in such a manner and on such terms as may be just and that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. It is to be noted that the power of the Court to permit amendments at any stage of the proceeding including the appellate stage is not altogether taken away by the proviso added to Order VI Rule 17 of the Code. Further, the amendment is being sought only on account of the conduct of the defendant by *inter alia* alleging that the defendant had trespassed into the hut in the suit property during the pendency of the suit and had made pucca constructions during the pendency of the first appeal suit after removing the hut. The plaintiff pleads her illiteracy and lack of knowledge of legal procedures as a ground in support of her seeking the

present request for amendment belatedly. This court is of the considered view that it would be a sound exercise of discretion to permit the amendment of the plaint 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 issues relating to one dispute resolved in one suit. Further, as rightly contended the plaintiff is entitled to bring a fresh suit on the subsequent cause of action. The defence of the defendant is also that the plaintiff can as well bring a fresh suit. Further the case of the defendant from the beginning is that the plaintiff has no right, title and interest in the property and that she is not in possession of the property and that the Will being relied upon by the plaintiff is not true. Therefore, if the amendment being sought for is permitted, no prejudice would be caused to the defendant. The law is well settled that all amendments ought to be allowed which satisfy two conditions namely, (a) not working injustice to the other side; and, (b) of being necessary for the purpose of determining real questions in controversy between the parties. 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 that all amendments, which are necessary for the purpose of determining the real questions in controversy between the parties shall be allowed if such amendment sought for do not change the basic nature of the suit. As per the precedential guidance of the Supreme Court referred to supra, change in the nature of the relief claimed shall not be considered as a change in the nature of the suit. Further, the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

12. Further the Supreme Court in **North Eastern Railway Admn. V. Bhagwan Das**^[11], having referred to a paragraph in the earlier decision, had held as follows:

“Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363] which still holds the field, it was held 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. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.”

12.1 Further, in **Anathula Sudhakar v. P. Buchi Reddy and other**^[12] the Supreme Court while summarising the position in regard to suits for prohibitory injunction relating to immovable property and the exercise of the discretion of the Court in identifying the cases where it will be necessary to go into the question of title, has held as under:

The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

Therefore, in a suit for perpetual injunction, the Court always has discretion to refer the plaintiff to a more comprehensive declaratory suit. Hence, depending upon the facts of the case, the Court can permit the plaintiff to seek amendment in the pending suit to convert the suit for perpetual injunction into one for declaration of title. As per the precedential guidance, the well settled rule of practice is not to dismiss the suit automatically but to allow the necessary amendments, if the plaintiff seeks to do so.

13. Coming to the contention that the plaintiff is not entitled to the reliefs being claimed by way of the proposed amendment, as rightly pointed out by the learned counsel for the plaintiff, the question whether the plaintiff would be entitled or not to the reliefs that are being claimed by way of proposed amendment cannot be prejudged while considering an application, which is filed for amendment of the plaint. This Court has already referred to the ratio in the decision of Sampath Kumar (supra). The facts of the case disclose that a suit for perpetual injunction was originally brought and in that suit the plaintiff moved an application for amendment of the plaint alleging that during the pendency of the suit the defendant has forcefully dispossessed the plaintiff. The defendant opposed that application for amendment stating that he had perfected title to the suit property by adverse possession and that if

amendment is permitted, valuable rights accrued to the defendant would be defeated. The High Court confirmed the order of the trial Court dismissing the said application for amendment. However, the Supreme Court allowed the appeal and permitted the plaintiff to amend the plaint as the amendment being sought is an event subsequent to the institution of the suit. Therefore, for all the aforesaid reasons, granting of amendment of plaint really subserves the ultimate cause of justice and avoids further litigation and, therefore, the amendment sought for by the plaintiff deserves to be allowed.

14. Before parting with the case, it is also necessary to make a mention that an amendment cannot be refused merely on the ground that if the amendment is permitted and the suit is allowed to be converted from a suit for perpetual injunction into one for declaration of title, the trial Court will lose the jurisdiction to entertain the suit and that the jurisdiction of the trial Court would be ousted and that the trial Court would be compelled to return the plaint for presentation to a proper Court having pecuniary jurisdiction. The fact that whenever an amendment of the plaint is sought and on allowing such amendment which is permissible, the plaint might have to be returned for presentation to proper Court having higher pecuniary jurisdiction shall not have a bearing on the merits of the application filed for amendment. In such cases, the amendment should be permitted by allowing the application; further, after the amendment is carried out and neat copy of the plaint is filed after paying the additional Court fee, if any, payable in view of the enhanced valuation of the reliefs claimed in the suit, the Court shall return the plaint to the plaintiff for presentation to proper Court to which the suit would go after the amendment is allowed. The view of this Court gets reinforced from the ratio in the decision in **Makireddy Ramayamma v. Menti Kamalakara Rao**^[13]. In this decision, this Court having noticed two divergent views earlier expressed by this Court had held as follows:

In between the two conflicting views expressed by Ramachandra Rao, J., and Parthasarathi, J., I prefer to agree with the view expressed by Parthasarathi, J., as it is in accordance with the practice that is uniformly followed in the subordinate courts in matters of amendment of pleadings. When the suit which was originally filed could be tried by the District Munsif, it is only the District Munsif that is competent to decide whether the amendment applied for should be allowed or refused

on merits. The consideration as to whether subsequent to the amendment the District Munsif would still continue to have pecuniary jurisdiction does not arise at that stage. If as a result of the amendment the suit valuation exceeds the pecuniary jurisdiction of the District Munsif, he would naturally return the plaint for presentation in the proper Court. It will not therefore be right for the District Munsif to refuse the amendment merely on the basis that if the amendment is allowed the suit would be beyond his pecuniary jurisdiction. The impugned order is accordingly set aside and the District Munsif is directed to permit the plaintiff to amend the plaint. It is open to the District Munsif if he is not satisfied with the valuation proposed by the plaintiff. To get the property valued. If on such revaluation he finds that he still has pecuniary jurisdiction, he will proceed with the trial of the suit after giving an opportunity to the defendant to file any additional written statement regarding the valuation of the property.

In the decision in **Mount Mary Enterprises v. Jivratna Medi Treat Private**

Limited^[14] a similar contention that an amendment of the plaint cannot be rejected on the ground that upon enhancement of the valuation of the suit property, the suit has to be transferred to a Court having a higher pecuniary jurisdiction was considered. The facts of the case show that in a suit for specific performance, the property had been under valued though the market value of the property was much higher and therefore, the defendant had taken an objection that the property was undervalued by the plaintiffs in the suit. The plaintiffs sought amendment of the plaint to incorporate the correct value of the property. In this background, the Supreme Court had held as follows:

“The main reasons assigned by the trial Court for rejection of the amendment application was that upon enhancement of the valuation of the suit property the suit was to be transferred to the High Court on its original side. In our view, that is not a reason for which the amendment application should have been rejected.”

15. Having regard to the facts and reasons aforementioned, this Court is of the considered view that there is acceptable merit in the request of the plaintiff and that the Court below is not justified in not permitting the plaintiff to amend the plaint and that, therefore, the order impugned warrants interference.

16. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.1557 of 2012 in AS.no.37 of 2010 is allowed. The Court below shall now permit the plaintiff to carry out the amendment of the plaint as prayed for and file a neat copy of the plaint. On

filing of such neat copy of the plaint and paying the necessary Court fee, the Court below shall give the defendant an opportunity to file additional written statement to answer the averments in the amended plaint. It is needless to state that the Court below shall now proceed to determine the appeal in strict accordance with the procedure established by law.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

1st July, 2016
Vjl

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- [\[1\]](#) 2012 (2) ALT 40 (SC)
[\[2\]](#) 2015 (4) ALD 1
[\[3\]](#) (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
[\[9\]](#) 2007(1) ALT 43 (SC)
[\[10\]](#) (2002) 7 SCC 559
[\[11\]](#) (2008) 8 SCC 511
[\[12\]](#) AIR 2008 SC 2033
[\[13\]](#) AIR 1983 AP 15
[\[14\]](#) (2015) 4 Supreme Court Cases 182