

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3184 of 2015

ORDER:

This revision petition under Article 227 of the Constitution of India by the unsuccessful petitioner/plaintiff is directed against the order dated 11.03.2015 of the learned Principal Junior Civil Judge, Guntur passed in I.A.no.2151 of 2014 in O.S.no.834 of 2012 filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) and Rule 28 of Civil Rules of Practice requesting to permit him to amend the plaint by incorporating the proposed pleadings and the reliefs as stated in the affidavit and the petition list.

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

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

The plaintiff claiming himself to be a tenant of the plaint schedule property since 2009 had brought the suit against the defendants for perpetual injunction to restrain them and their men and followers etcetera from interfering with his peaceful possession and enjoyment of the plaint schedule property except in accordance with the procedure established by law and for costs. The defendants 2 and 3 filed separate written statements resisting the suit.

3.1 According to the plaintiff, the 1st defendant entered into a sale agreement with him on 25.12.2010 and had agreed to sell the property @ Rs.5,000/- per square yard by treating the amount of Rs.4,00,000/- sent by the plaintiff in the year 2009 as advance and that therefore, the plaintiff had requested to register the sale deed by receiving the balance sale

consideration and that on 16.11.2012, the defendants 4 to 6 came along with antisocial elements to the schedule property and had threatened to interfere with his possession and enjoyment and that therefore, he had filed the suit; and, that during the pendency of the suit, i.e., on 28.8.2014, they had broken open the locks of the schedule property and removed the valuable and other articles from the schedule property and disturbed his possession and enjoyment over the plaint schedule property and that, therefore, he had made a complaint to the police and that in the circumstances, the possession over the plaint schedule property is to be restored to him by ordering *status quo ante* and that the articles that were removed, which are worth Rs.4,75,000/-, have to be returned to him and that in view of the subsequent events of forceful dispossession and removal of his belongings from the schedule property, he is constrained to seek amendment of the plaint to incorporate necessary further pleadings as stated in the proposed amendment and to seek the relief of mandatory injunction directing the defendants to restore possession of the plaint schedule property to him and to maintain *status quo ante* till he is evicted in accordance with the procedure established by law.

3.2 The contesting defendants while reiterating their defence pleaded in the written statements had resisted the application of the plaintiff by filing a counter through the 2nd defendant/2nd respondent. The material averments in the said counter, in brief, are as follows:

The material allegations in the application and in the affidavit filed in support of the petition are false. The defendants 1, 4 to 6 have never seen the face of the plaintiff. The property was never leased out by the 1st defendant as alleged in the plaint at any point of time. There was no occasion for the 1st defendant to offer to sell the schedule property to the plaintiff. There was no occasion for the plaintiff to spend any amount towards repairs of the suit schedule property and that therefore, it is false to allege that the plaintiff spent Rs.4,00,000/- on the repairs of the plaint schedule property. The plaint schedule property never required any repairs. There was no

necessity for the 1st defendant to sell the property. The suit schedule property was gifted to the 2nd defendant under registered gift deed dated 30.04.2010 and vacant possession was delivered to the said defendant. The 2nd defendant having accepted the gift took possession of the plaint schedule property and has been in possession and enjoyment of the same in his own right. The 3rd defendant is behind the litigation. No agreement of sale was ever entered into. If the contention that the existence of agreement of sale is true, the plaintiff ought to have demanded for specific performance and ought to have filed a suit for specific performance of contract, but not a mere suit for injunction. If really, the locks were broken open and the plaintiff was forcefully dispossessed and his articles were removed and if really, a police complaint was lodged, there would have been some police action. However, no police action was ever taken against the contesting defendants. The petition for amendment of the plaint is filed about three years after the institution of the suit only to harass the contesting defendants and protract the litigation. The plaintiff did not make a mention of the list of articles, which were allegedly removed. The proposed amendment, if allowed, changes the cause of action and materially alters the reliefs claimed in the suit. The proposed amendment sought for is illegal. The incident said to have taken place on 16.11.2012 is false and the story of the plaintiff is a concocted story. The petition may be dismissed.

4. After hearing the learned counsel for both the sides and on merits, the trial Court had dismissed the application of the plaintiff *inter alia* holding that when the possession of the plaintiff is disturbed and the plaintiff is dispossessed from the suit schedule property, the suit for perpetual injunction has become infructuous. Therefore, the aggrieved plaintiff had filed this revision petition.

5. The learned counsel for the plaintiff would contend as follows:

The order is contrary to facts and law. The learned Judge erred in refusing to exercise jurisdiction vested in him. The court below ought to have seen that when dispossession from the property was done forcefully without

following the procedure established by law and when such dispossession is illegal, the plaintiff is entitled to seek amendment of the plaint for restoration of possession and for restoration of *status quo ante* to maintain his possession till he is evicted in accordance with the procedure established by law. The trial Court ought not to have dismissed the application for amendment by observing that the suit for perpetual injunction has become infructuous. The trial Court ought to have seen that since the plaintiff is dispossessed during the pendency of the suit, the need to seek amendment had arisen and that, therefore, the amendment is permissible under facts and in law. The amendment does not change either the cause of action or the nature of the suit. The court below ought to have seen that the defendants by their illegal acts of forceful dispossession cannot frustrate the relief claimed in the suit. The court below ought to have seen that it has ample power and wide discretion to permit the amendment. The court below ought to have seen that the plaintiff is entitled to bring a fresh suit on the basis of the subsequent events and subsequent cause of action; and, that the provision of law is intended to avoid multiplicity of litigation and to determine the real question in controversy and that therefore, the Court below ought to have exercised jurisdiction in larger interest of doing full and complete justice to the parties and as the dominant purpose of the rule is to prevent multiplicity of litigation. The court below ought to have seen that no prejudice would be caused to the defendants if the amendment is permitted as the defendants are contending from the beginning that the plaintiff is a stranger and that the 3rd defendant is behind the litigation and that the plaintiff was neither a tenant nor an agreement holder and was never in possession of the property. The trial Court ought to have seen that the amendment is necessary for avoiding further litigation and that in case, the amendment is allowed, it would subserve the ultimate cause of justice and that the amendment is also necessary for the purpose of determining the real question in controversy between the parties and for setting at rest the dispute once and for all.

6. The learned counsel for the contesting defendants while supporting the orders of the Court below would submit that the amendment was sought

belatedly by making false allegations and that the plaintiff was not in possession of the property either before the suit or at the time of filing of the suit and that therefore, the question of his dispossession much less forceful dispossession from the property and removal of his articles from the property does not arise and that the suit is filed at the instance of the 3rd defendant and that the suit as well as the proposed amendment are based on false allegations to harass the defendants with the aid of the 3rd defendant. He would also submit that issues were framed and that the plaintiff could not show that he could not seek the proposed amendment earlier despite due diligence and hence, in view of the proviso to Order VI Rule 17 of the Code, the present application for amendment shall not be allowed as the law is well settled that trial commences with framing of issues.

7. I have bestowed my attention to the facts and the submissions. I have carefully gone through the pleadings. It is profitable to first refer to the legal position obtaining.

In **J.Samuel and others v. Gattu Mahesh and others**^[1] 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^[2] 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 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**^[3] 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**^[4], 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**^[5], 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**^[6], 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. Yellapa**^[7], 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 (7th 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 another**^[8] 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 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.

In **North Eastern Railway Admn. V. Bhagwan Das**^[9] 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.”

8. Reverting to the instant case facts, what is to be noted is that the plaintiff having filed a suit for perpetual injunction had *inter alia* pleaded in the plaint that he is a tenant in the plaint schedule property and that he had entered into an agreement of sale with the 1st defendant and that he is in possession of the property and that in the circumstances stated in the plaint, he is constrained to file the suit for perpetual injunction against the defendants not to interfere with his possession till he is evicted from the property in accordance with the procedure established by law. In the present application for amendment of the plaint, his further case is that he is forcefully dispossessed and his articles of a value of Rs.4,75,000/- were removed from the property during the pendency of the suit and that therefore, he is entitled to get back possession by way restoration by means of mandatory injunction to maintain *status quo ante* and hence, he is constrained to seek amendment of the plaint to introduce necessary averments by way of the proposed amendment and to seek the relief of mandatory injunction directing the defendants to restore possession of the plaint schedule property to him to maintain *status quo ante* till he is evicted in accordance with the procedure

established by law. On the other hand, the case of the defendants 1, 2, 4 to 6 is in the nature of total denial and they are denying possession of the plaintiff at any time and are stating that the plaintiff is a stranger and that the 3rd defendant is behind the litigation. They are opposing the amendment being sought for by the plaintiff on various grounds stated supra.

9. Dealing with the contention that the issues are framed based on the pleadings and that, therefore, the application for amendment is debarred in view of the proviso to Order 6 Rule 17, it is necessary to refer to the decision in **Usha Devi v. Rijwan Ahamd**^[10]. In the said decision, 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 trial of the suit reliance was placed upon 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 to the court to allow an amendment of the written statement at any stage of the proceedings.”

The Supreme Court having referred to a three-judge Bench decision in **Sajjan Kumar v. Ram Kishan**^[11], held as follows:

“Having heard the learned Counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an

error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.”

Thus in Usha Devi's case, 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 instant case on hand also, issues are only framed and the recording of the evidence has not yet commenced. Therefore, in the well considered view of this Court, the facts of present case are akin to the facts of the cases in Usha Devi (supra) and Sajjan Kumar (supra). Hence, this Court is of the considered view that on the ground of mere delay amendment cannot be refused. Therefore, the matter now needs to be examined on its merit.

10. The ratios in the decisions support the plea of the plaintiff that an amendment cannot be refused merely on the ground of delay. 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 real questions of controversy between the parties, shall be allowed if such amendments sought for do 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 the 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. As rightly pointed out, the question whether the plaintiff would be entitled or not to the proposed relief of mandatory injunction now being introduced by way of proposed amendment cannot be prejudged while considering an application, which is filed for seeking the amendment of the plaint. If the proposed amendment is allowed, no right accrued to the contesting defendants would get defeated as the said defendants are totally denying the claim of the plaintiff from the beginning and are contending that the plaintiff is not entitled to any reliefs. 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. 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. 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 deserves to be allowed. Having regard to the precedential guidance, as the plaintiff is seeking the relief of mandatory injunction for restoration of possession in the pending suit for perpetual injunction, this Court finds that it would be a sound exercise of discretion to permit the amendment of the plaint to enable the plaintiff to seek the relief as being prayed for. Since the dominant purpose of the Rule is to minimise the litigation and to enable the parties to have all the issues relating to one dispute resolved in one suit, the amendment sought for by the plaintiff can be allowed, in the considered view of this Court. 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. The amendment, even if permitted at this stage, helps in setting at rest the dispute between the parties once and for all. In view of the ratios in the decisions which are squarely applicable to the facts of the case, this Court is of the considered view that the amendment sought for by the plaintiff can be permitted in the facts and circumstances of the case and that, therefore, the order of the court below brooks interference.

11. Viewed thus, this Court finds that the trial Court is not justified in dismissing the application of the plaintiff. Having regard to the facts and the above said reasons, this court finds that the order impugned is liable to be set aside.

12. Before parting with the case, it is to be noted that the learned counsel for the contesting defendants had contended that if the plaintiff's case that he was forcefully disposed from the property during the pendency of the suit is true, he ought to have sought the relief of recovery of possession by valuing the said relief as per law on the market value of the property and that the plaintiff ought to have paid the required Court fee, but he cannot seek amendment of plaint to enable him to seek the relief of mandatory injunction and that the suit for mandatory injunction is not maintainable in the facts and circumstances of the case. Be it noted that the law is well settled that the merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing the prayer for amendment. Therefore, while not countenancing the said contention at this stage, it is trite to observe that it is open to the defendants to take the above and other available pleas, in the additional written statements, which they may file in answer to the averments in the amended plaint.

13. In the result, the Civil Revision Petition is allowed by setting aside the order impugned. As a sequel, I.A.no.2151 of 2014 in O.S.no.834 of 2012 stands allowed. The trial Court shall now permit the plaintiff to carry out the amendment of the plaint and pay the necessary deficit Court fee, if any payable, and to file a neat copy of the plaint. It is needless to state that the

trial Court shall give an opportunity to the defendants to file additional pleadings to answer the averments in the amended plaint.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

01st June, 2016
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[\[1\]](#) (2012) Supreme Court Cases 300

[\[2\]](#) (2008) 1 Supreme Court Cases 364

[\[3\]](#) (2009) 2 Supreme Court Cases 409

[\[4\]](#) (2009) 10 SCC 84

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

[\[6\]](#) 2013(1)ALD 1(SC)

[\[7\]](#) AIR 2004 SC 4102

[\[8\]](#) (2002) 7 SCC 559

[\[9\]](#) (2008) 8 SCC 511

[\[10\]](#) (2008) 3 Supreme Court Cases 717

[\[11\]](#) (2005) 13 SCC 89