

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.5799 of 2015

ORDER:

This is a revision under Article 227 of the Constitution of India by the respondents-defendants against the order dated 15.09.2015 of the learned IV Additional District Judge, Tirupati of Chittoor District, passed in IA.no.332 of 2012 in OS.no.68 of 2007 filed by the petitioners-plaintiffs under Order I Rule 10(2) and Section 151 of the Code of the Civil Procedure, 1908, ('the Code', for short) read with Rule 28 of A P Civil Rules of Practice, 1980, requesting to permit the plaintiffs to implead the proposed 2nd defendant as party 2nd defendant in the suit and carry out amendments to the plaint as stated in the petition list.

2. I have heard the submissions of Sri M.P. Chandramouli, learned counsel representing Sri N. Bharat Babu, learned counsel for the revision petitioners-defendants ('the defendants', for short) and of Sri A. Chandraiah Naidu, learned counsel appearing for the respondents-plaintiffs ('the plaintiffs', for short). I have perused the material record.

3. The case of the plaintiffs in support of their requests for addition of the proposed 2nd defendant as a party 2nd defendant and for amendment and consequential amendment of the plaint, in brief, is as follows:

The 2nd plaintiff is the wife of the 1st plaintiff. Plaintiffs 3 and 4 are the brothers of the 2nd plaintiff. The 5th plaintiff is representing the branch of late K. Jayamma along with the 6th plaintiff. The suit is filed by the plaintiffs for partition of the properties more fully described in the plaint 'A' to 'D' schedules. The sole defendant is the elder brother of the 1st plaintiff. He has been managing the joint family properties and was purchasing properties with the joint family income and keeping the same in his name and also in the name of his wife, the proposed 2nd defendant, by creating documents. The 1st

plaintiff secured two documents of such properties. Copies of the said documents are filed along with the petition. The said properties are also liable for partition along with the plaint schedule properties. The said properties are not mentioned in the original plaint schedule. The evidence on the side of the plaintiffs is not yet closed. In the circumstances, the petition is filed to implead the wife of the defendant as the 2nd defendant and to permit to amend the plaint and the plaint schedule to facilitate seeking of partition of the proposed plaint schedule properties, that is, plaint 'E' to 'G' schedule properties. The delay in filing the petition is neither wilful nor wanton. The proposed amendment, if permitted, would not cause any prejudice to the defendant nor does it change the nature and character of the suit.

4. Apart from denial of the allegations made by the plaintiffs and reiteration of his defence, the case of the defendant in the counter and additional counter and the case of proposed 2nd defendant, in brief, are as follows:

The proposed 2nd defendant, P. Nirmala, who is the wife of the defendant, is not a co-sharer or a co-owner. In the affidavit filed in support of the application, the plaintiffs have not explained as to how the properties of the proposed 2nd defendant are liable for inclusion in the plaint schedule as 'E' and 'G' schedule properties. There is no cause of action for the plaintiffs against the proposed 2nd defendant. The trial in the suit has commenced and PWs1 to 3 were already examined. Therefore, at this stage of the suit, the present application to permit to add a party and amend and consequentially amend the plaint is not maintainable. The proposed 2nd defendant has got 13 acres of land of her own and she is also having poultry farm consisting sheds for 20,000 layers of birds in her said land; she and her father are running the poultry farm in the said land. She has got the property from her father by inheritance. Thus, the proposed 2nd defendant acquired the plaint 'E' and 'G' schedule properties with her own money and they are her self acquired

properties. The proposed 'F' schedule property is self acquired property of the defendant and it was acquired by him with his own money, which he earned from his personal contract works. It is an admitted fact that this defendant is a registered special class civil contractor and he has done several contract works. The properties were shown in the income tax returns of this defendant as his self acquired properties. The 1st plaintiff joined with this defendant as one of the partners in the contract works related to some buildings at Tirupati and he took away his share of profit from the firm and went out of the firm. The documents related to the proposed 'F' and 'G' schedule properties are exhibited as exhibits A20 and A21. Therefore, the plaintiffs have ample knowledge about the existence of the said properties in the name of the proposed 2nd defendant. No explanation is forthcoming for not impleading the 2nd defendant and for not amending the plaint before the commencement of the trial. The plaintiffs are not diligent. The proposed 2nd defendant is not a necessary party to the suit. The plaintiffs are falsely claiming that the proposed plaint schedule properties described in the proposed schedules 'E' to 'G' are properties liable for partition though they are in the names of the proposed 2nd defendant and the defendant. The joint family properties were divided in the year 1965 itself by metes and bounds in an oral partition and the respective sharers are enjoying their respective shares of properties separately and exclusively. The 1st plaintiff is behind the litigation. He purchased several properties with the income from the joint family properties which had fallen to his share. He cleverly obtained sale deeds in the name of his wife, son and daughters and fraudulently filed this suit against this defendant to knock away the properties of this defendant. After the death of the father of this defendant and after partition with his brother, mother and sisters, this defendant started cement business at Tirupati and did civil contract works. He is a big contractor and is paying income tax individually. He purchased the properties in his name with his own earnings. Earlier, OS.No.1184 of 1998 was

filed on the file of the Court of the learned I Additional Junior Civil Judge, Tirupati, for cancellation of said sale deed alleging that T.V. Vimala, the vendor of 'F' schedule property did not execute the registered sale deed in favour of the defendant. The said suit was dismissed on merits. The plaintiffs pleaded in the plaint in OS.no.588 of 2007 that the defendant being the eldest son has been managing the joint family properties and all of them are enjoying the produce according to their respective shares and since two years the defendant is misusing the joint family funds. It is nowhere stated earlier that the defendant has been purchasing properties in his name with the joint family funds by misusing the joint family funds. In the plaint it is stated that since one year the defendant is misusing the joint family funds and properties. The proposed schedule properties are being shown in the income tax and wealth tax accounts of the defendant since more than 30 years. The question of purchasing the proposed schedule properties with the joint family funds therefore does not arise for consideration. The subject petition was filed under Order I Rule 10(2) of the Code. The petition was later amended due to death of the 2nd petitioner/plaintiff. The petitioner filed neat copy of the said petition under Order VI Rule 17 of the Code; as such the neat copy of the amended petition is not maintainable and is liable to be dismissed for not filing the proper neat copy of the amended petition. As per the amended Code, the commencement of trial is a bar for seeking amendment of pleadings. The plaintiffs misled the Court and clandestinely filed the petition under Order I Rule 10(2) of the Code for adding the proposed party. The amendment of plaint cannot be sought in impleadment application and it is liable to be dismissed on this ground alone.

5. At the hearing before the trial Court, no oral and documentary evidence was adduced on the side of the plaintiffs. However, exhibits R1 to R47 were marked on behalf of the defendant and proposed 2nd defendant.

6. On merits and by the order impugned in this revision, the trial Court allowed the petition of the plaintiffs, *inter alia*, observing that merely for the reason of delay, a valuable right cannot be curtailed; and that at the stage of disposing of the interlocutory application of the plaintiffs, it is not possible for the Court to ascertain whether the properties in question were purchased with the joint family funds and were kept in the names of the defendant and the proposed defendant who is no other than the wife of the defendant; and that the said aspect being a pure question of fact has to be decided by the Court after taking into consideration the oral evidence that would be brought on record and that if the 2nd defendant is impleaded and the plaint is permitted to be amended as sought for by the plaintiffs, no prejudice would be caused to the defendant and the proposed 2nd defendant.

7. At the hearing, learned counsel for the parties reiterated the respective contentions, which are already stated supra.

8. The learned counsel for the defendant while reiterating the defence further submitted as follows:

The trial Court failed to see that the petition suffers from an error apparent on the face of the record. In the first instance the petition was filed under Order VI Rule 17 of the Code praying to permit the plaintiffs to implead the 2nd petitioner herein as 2nd defendant and to make such other necessary consequential amendments. The consequential amendment is not sought for, for the addition of the proposed 2nd defendant; but, a prayer is made to amend the paragraph 14 of the plaint, cause of action in the plaint and also to add 'E' to 'G' schedules in the plaint schedule. The provisions were however amended by order dated 20.10.2014 in IA.No.195 of 2014. In the amendment being sought with regard to the cause of action, the plaintiffs have not stated as to when they came to know about the purchase of the 'E' to 'G' schedule properties though they are required to state the same in order to avoid bar of

limitation. The trial Court failed to see that the certified copies of title deeds of the proposed 'E' to 'G' schedule properties were obtained on 17.06.2008 by the plaintiffs, but, the subject petition was filed in the year 2012. The trial Court, though referred to the binding judgments cited by the revision petitioners, failed to follow the ratios therein. The trial Court failed to see that the proposed amendment in paragraph 14(a) is contrary to the pleading in paragraphs 5 and 14 of the plaint. In the plaint it is specifically pleaded that the defendant being the eldest male member is managing the properties and that the produce is being shared by the sharers and that since one year prior to the filing of the suit, the defendant is misusing the income from the joint family properties. However, the sale deeds by virtue of which the proposed plaintiff 'E' to 'G' schedule properties were purchased, were obtained in the year 1980. Therefore, the very plaint pleadings would lay bare that the contention of the plaintiffs that the defendant purchased properties with joint family income and kept the properties in his name and in the name of his wife, the proposed 2nd defendant, by creating documents is untenable.

9. Per contra, the learned counsel for the plaintiffs while supporting the orders of the Court below and while reiterating the contentions of the plaintiffs would submit that the suit is one for partition and that subsequent to the filing of the suit the 1st plaintiff had obtained copies of the documents relating to the properties to be included in the plaint schedule as 'E' to 'G' schedules and that in view of the fact that the said properties were acquired by the defendant who is managing the joint family properties with the income from the joint family properties in his name and in the name of his wife, the proposed 2nd defendant, it has become necessary to seek impleadment of the proposed 2nd defendant as party 2nd defendant and amendments and consequential amendments of the plaint as the properties mentioned in the proposed schedules are also liable for partition. He would also submit that a suit for partial partition is not maintainable and that if the application is ordered, the

whole dispute can be given a quietus once and for all and in one litigation without driving the parties to multiple litigations and that the trial Court having exercised its discretion allowed the petition of the plaintiffs and that therefore the said order does not call for interference. He had also submitted that since the *lis* is one for partition no prejudice would be caused if the addition of a party and amendment of the plaint is permitted as even a preliminary decree can be permitted to be amended by permitting to add parties and additional properties.

10. Coming to the aspect of the provision of law that would be applicable, it is apposite to note that both Order I Rule 10 and Order VI Rule 17 of the Code read with Rule 28 of A P Civil Rules of Practice, 1980, are all relevant and applicable. In fact Order I Rule 10 (4) reads as under:

Where defendant added, plaint to be amended:—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

11. As one of the contentions is that the amendment of the plaint cannot be permitted once trial has commenced, it is necessary to refer to the provision of law viz., proviso to Order VI Rule 17 of the Code, which reads as under:

“ Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

11.1 It is now profitable to refer to the precedents:

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

¹ (2012) Supreme Court Cases 300

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

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

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

² (2008) 1 SCC 364

³ (2009) 2 Supreme Court Cases 409

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

⁴ (2009) 10 SCC 84

⁵ (2008) 5 SCC 117

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 Others⁶, 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. Yellapa⁷, 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 (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

⁶ 2013(1)ALD 1(SC)

⁷ AIR 2004 SC 4102

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. 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

⁸ (2002) 7 SCC 559

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*⁹ a contention was advanced that the trial of the suit would commence with the settlement of the issues; and, in support

⁹ (2008) 3 Supreme Court Cases 717

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 VI 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 VI 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 Kishan¹⁰, had 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.”

¹⁰ (2005) 13 SCC 89

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."

11.2 In the case on hand also, the evidence on the side of the plaintiffs is not yet closed. 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, in the counter of the defendants that the belated request of the plaintiffs for amendment of the plaint cannot be permitted, is devoid of merit.

12. Coming to the addition of the proposed 2nd defendant, the wife of the defendant, as party 2nd defendant to the suit, the specific case of the plaintiffs is that the plaint 'E' and 'G' schedule properties were acquired by the defendant with the joint family income and the documents were obtained in the name of his wife and therefore the said properties are also liable for partition. The defence of the defendant and the proposed 2nd defendant before this Court is that the proposed 2nd defendant was having huge extent of land and in that land she was having a big poultry farm and that she has got independent sources of income and that from that income she acquired the property in her name and that the property was not acquired with the joint family income by the defendant in her name. Similarly, insofar as the other proposed schedule, the case of the defendant is that he acquired the said property with his earnings from civil contract works and cement business. As rightly and fairly conceded, 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. 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. If the amendment as proposed is allowed, no right accrued to the defendant would get defeated as the defendant from the inception is denying the case of the plaintiffs and is contending that there was a prior oral partition and that the suit for partition is not maintainable. In the well-considered view of this Court, if the amendment is permitted, 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 the reliefs as claimed in the subject application really sub-serves the ultimate cause of justice and avoids further litigation. Hence, the application of the plaintiffs seeking addition of the 2nd defendant and amendment of the plaint and plaint schedule deserves to be allowed. As a sequel, it must be held that the Court below is justified in allowing the petition of the plaintiffs.

13. On the above analysis, this Court finds that the order impugned does not brook interference.

14. Accordingly, the Civil Revision Petition is dismissed confirming the order of the trial Court.

Miscellaneous petitions, if any, pending in this revision, shall stand closed. There shall be no order as to costs.

30th November, 2016
Vjl

M. SEETHARAMA MURTI, J

